

# Senate Daily Reader

**Thursday, February 14, 2002**

Bills Included				
HB 1001	HB 1002	HB 1003	HB 1034	HB 1052
HB 1075	HB 1136	HB 1141	HB 1181	HB 1211
HB 1216	HB 1220	HB 1226	HB 1234	HB 1253
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# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

555H0018

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1001** - 02/08/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and  
Senators McCracken, Dennert, and Reedy at the request of the Interim  
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to ratify the Uniform Sales and Use Tax Administration Act  
2 and to implement the uniform and simplified features proposed by the Streamlined Sales Tax  
3 Project.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. As used in this Act:

6 (a) "Agreement," means the Streamlined Sales and Use Tax Agreement;

7 (b) "Certified automated system," means software certified jointly by the states that are  
8 signatories to the agreement to calculate the tax imposed by each jurisdiction on a  
9 transaction, determine the amount of tax to remit to the appropriate state, and  
10 maintain a record of the transaction;

11 (c) "Certified service provider," means an agent certified jointly by the states that are  
12 signatories to the agreement to perform all of the seller's sales tax functions;

13 (d) "Person," means an individual, trust, estate, fiduciary, partnership, limited liability  
14 company, limited liability partnership, corporation, or any other legal entity;



(e) "Sales tax," means the tax levied under chapter 10-45;

(f) "Seller," means any person making sales, leases, or rentals of personal property or services;

(g) "State," means any state of the United States and the District of Columbia;

(h) "Use tax," means the tax levied under chapter 10-46.

Section 2. The Legislature finds that this state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Section 3. The Department of Revenue is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The Department of Revenue is further authorized to take other actions reasonably required to implement the provisions set forth in this Act. Other actions authorized by this Act include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The secretary of revenue or the secretary's designee and two legislators are authorized to represent this state before the other states that are signatories to the agreement. The Executive Board of the Legislative Research Council shall appoint one senator and one representative to represent this state.

Section 4. No provision of the agreement authorized by this Act in whole or part invalidates

1 or amends any provision of the law of this state. Adoption of the agreement by this state does  
2 not amend or modify any law of this state. Implementation of any condition of the agreement in  
3 this state, whether adopted before, at, or after membership of this state in the agreement, must  
4 be by the action of this state.

5 Section 5. The Department of Revenue shall not enter into the Streamlined Sales and Use  
6 Tax Agreement unless the agreement requires each state to abide by the following requirements:

7 (a) The agreement must set restrictions to achieve over time more uniform state rates  
8 through the following:

9 (1) Limiting the number of state rates.

10 (2) Limiting the application of maximums on the amount of state tax that is due on  
11 a transaction.

12 (3) Limiting the application of thresholds on the application of state tax.

13 (b) The agreement must establish uniform standards for the following:

14 (1) The sourcing of transactions to taxing jurisdictions.

15 (2) The administration of exempt sales.

16 (3) The allowances a seller may take for bad debts.

17 (4) Sales and use tax returns and remittances.

18 (c) The agreement must require states to develop and adopt uniform definitions of sales  
19 and use tax terms. The definitions must enable a state to preserve its ability to make  
20 policy choices not inconsistent with the uniform definitions.

21 (d) The agreement must provide a central, electronic registration system that allows a  
22 seller to register to collect and remit sales and use taxes for all signatory states.

23 (e) The agreement must provide that registration with the central registration system and  
24 the collection of sales and use taxes in the signatory states will not be used as a factor

1 in determining whether the seller has nexus with a state for any tax.

2 (f) The agreement must provide for reduction of the burdens of complying with local  
3 sales and use taxes through the following:

4 (1) Restricting variances between the state and local tax bases.

5 (2) Requiring states to administer any sales and use taxes levied by local  
6 jurisdictions within the state so that sellers collecting and remitting these taxes  
7 will not have to register or file returns with, remit funds to, or be subject to  
8 independent audits from local taxing jurisdictions.

9 (3) Restricting the frequency of changes in the local sales and use tax rates and  
10 setting effective dates for the application of local jurisdictional boundary  
11 changes to local sales and use taxes.

12 (4) Providing notice of changes in local sales and use tax rates and of changes in  
13 the boundaries of local taxing jurisdictions.

14 (i) The agreement must outline any monetary allowances that are to be provided by the  
15 states to sellers or certified service providers.

16 (j) The agreement must require each state to certify compliance with the terms of the  
17 agreement prior to joining and to maintain compliance, under the laws of the member  
18 state, with all provision of the agreement while a member.

19 (k) The agreement must require each state to adopt a uniform policy for certified service  
20 providers that protects the privacy of consumers and maintains the confidentiality of  
21 tax information.

22 (l) The agreement must provide for the appointment of an advisory council of private  
23 sector representatives and an advisory council of nonmember state representatives to  
24 consult with in the administration of the agreement.

1       Section 6. The agreement authorized by this Act is an accord among individual cooperating  
2       sovereigns in furtherance of their governmental functions. The agreement provides a mechanism  
3       among the member states to establish and maintain a cooperative, simplified system for the  
4       application and administration of sales and use taxes under the duly adopted law of each member  
5       state.

6       Section 7. A certified service provider is the agent of a seller, with whom the certified service  
7       provider has contracted, for the collection and remittance of sales and use taxes. As the seller's  
8       agent, the certified service provider is liable for sales and use tax due each member state on all  
9       sales transactions it processes for the seller except as set out in this section.

10      A seller that contracts with a certified service provider is not liable to the state for sales or  
11      use tax due on transactions processed by the certified service provider unless the seller  
12      misrepresented the type of items it sells or committed fraud. In the absence of probable cause to  
13      believe that the seller has committed fraud or made a material misrepresentation, the seller is not  
14      subject to audit on the transactions processed by the certified service provider. A seller is subject  
15      to audit for transactions not processed by the certified service provider. The member states  
16      acting jointly may perform a system check of the seller and review the seller's procedures to  
17      determine if the certified service provider's system is functioning properly and the extent to which  
18      the seller's transactions are being processed by the certified service provider.

19      A person that provides a certified automated system is responsible for the proper functioning  
20      of that system and is liable to the state for underpayments of tax attributable to errors in the  
21      functioning of the certified automated system. A seller that uses a certified automated system  
22      remains responsible and is liable to the state for reporting and remitting tax.

23      A seller that has a proprietary system for determining the amount of tax due on transactions  
24      and has signed an agreement establishing a performance standard for that system is liable for the

1 failure of the system to meet the performance standard.

2 Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the  
3 Uniform Sales and Use Tax Administration Act.

4 Section 9. That § 10-1-44.1 be repealed.

5 ~~—10-1-44.1. The Governor may, for the purpose of entering into a compact, negotiate and~~  
6 ~~enter into a compact with officials of other states for the development, implementation, and~~  
7 ~~administration of a simplified sales and use tax collection system. The compact shall conform~~  
8 ~~generally to the provisions of chapter 1-24 relating to the joint exercise of governmental powers~~  
9 ~~with other public agencies. The compact shall provide for the collection, reporting, auditing, and~~  
10 ~~distribution of taxes imposed under chapters 10-45 and 10-46. The compact shall provide for the~~  
11 ~~joint selection of persons to act as agents of the compact states for the collection and remittance~~  
12 ~~of taxes imposed under chapters 10-45 and 10-46.~~

13 Section 10. That § 10-1-44.2 be repealed.

14 ~~—10-1-44.2. If the Governor enters into a compact pursuant to § 10-1-44.1, the Governor may~~  
15 ~~direct the secretary of revenue to enter into a joint contract with any person to act as an agent~~  
16 ~~of South Dakota for the collection and remittance of taxes imposed under chapters 10-45 and~~  
17 ~~10-46.~~

18 Section 11. That § 10-1-44.3 be amended to read as follows:

19 10-1-44.3. ~~Notwithstanding the provisions of § 10-1-28.2, if the Governor enters into a~~  
20 ~~compact pursuant to § 10-1-44.1, the Governor may direct~~ As required by the agreement entered  
21 into pursuant to section 3 of this Act, the secretary of revenue ~~to~~ may release lists of persons  
22 licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters  
23 10-45 and 10-46 to the extent necessary to verify each person's exempt status.

24 Section 12. That § 10-1-44.4 be repealed.

~~10-1-44.4. Any compact entered into by the Governor pursuant to § 10-1-44.1 is effective upon the Governor's signature and ratification by the Legislature.~~

Section 13. That § 10-45-1 be amended to read as follows:

10-45-1. Terms used in this chapter mean:

(1) "Agricultural purposes," the producing, raising, or growing and harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes;

(2) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~ such person with the object of gain, benefit, or advantage, either direct or indirect;

(3) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;

(4) "Gross receipts," the amount received in money, credits, property, or other money's worth in consideration of sales at retail within this state. No deduction may be taken for the cost of the property sold, the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, nor may any deduction be allowed for losses. Gross receipts do not include any fees or other interest imposed by a retailer for late charges on overdue accounts, no account, and nonsufficient funds checks. Discounts for any purpose allowed and taken on sales may not be included as gross receipts, nor may the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. If any tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter,



1 ~~and the tangible personal property taken in trade will be subject to the sales tax~~  
2 ~~imposed by this chapter when sold, the credit or trade-in value allowed by the retailer~~  
3 ~~may not be included as gross receipts. On all sales made under conditional sales~~  
4 ~~contract, or under other forms of sale wherein the payment of the principal sum is~~  
5 ~~extended over a period longer than sixty days from the date of sale, only the portion~~  
6 ~~of the sale amount that has actually been received in cash by the retailer during each~~  
7 ~~reporting period is subject to the tax imposed by this chapter~~ total amount or  
8 consideration, including cash, credit, property, and services, for which tangible  
9 personal property or services are sold, leased, or rented, valued in money, whether  
10 received in money or otherwise, without any deduction for the following:

- 11 (a) The retailer's cost of the property or service sold;
- 12 (b) The cost of materials used, labor or service cost, interest, losses, all costs of  
13 transportation to the retailer, all taxes imposed on the retailer, and any other  
14 expense of the retailer;
- 15 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for  
16 any services necessary to complete the sale whether or not separately stated,  
17 including delivery charges; and
- 18 (d) The value of exempt tangible personal property whether or not separately  
19 stated on the invoice, billing, or similar document given to the purchaser where  
20 taxable and exempt tangible personal property have been bundled together and  
21 sold by the retailer as a single product or piece of merchandise;

22 Gross receipts do not include:

- 23 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third  
24 party that are allowed by a retailer and taken by a purchaser on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

~~(4)~~(5) "Person," any individual, firm, copartnership, joint adventure, association, limited liability company, corporation, municipal corporation, estate, trust, business trust, receiver, the State of South Dakota and its political subdivisions, or any group or combination acting as a unit;

~~(5)~~(6) "Relief agency," the state, and county, municipality or district thereof, or any agency engaged in actual relief work;

~~(6)~~(7) "Retail sale" or "sale at retail," ~~the sale of either tangible personal property or services, or both, to the consumer or user thereof, or to any person for any purpose other than for resale; the sale of natural or artificial gas, electric energy, water, and communication service to consumers or users; and the sale of tickets or admissions to places of amusement or athletic contests~~ any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

~~(7)~~(8) "Retailer," ~~every~~ any person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this chapter. ~~"Retailer"~~ The term also includes ~~every~~ any person subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself or herself out as engaging in the business of selling such tangible personal property at retail does

1 not constitute such person a retailer;

2 ~~(8)~~(9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or  
3 by any means whatsoever, for a consideration.

4 Section 14. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For purposes of the tax imposed by this chapter, gross receipts do not include any fees or  
7 other interest imposed by a retailer for late charges on overdue accounts, no account, or  
8 nonsufficient funds checks.

9 Section 15. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For purposes of the tax imposed by this chapter, the sale price of property returned by  
12 customers are not gross receipts if the full sale price thereof is refunded either in cash or by  
13 credit.

14 Section 16. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 For purposes of the tax imposed by this chapter, if any tangible personal property is taken  
17 in trade or in a series of trades as a credit or part payment of a retail sale taxable under this  
18 chapter, and the tangible personal property taken in trade is subject to the sales tax imposed by  
19 this chapter when sold, the credit or trade-in value allowed by the retailer may not be included  
20 as gross receipts.

21 Section 17. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales  
24 contract, or under other forms of sale wherein the payment of the principal sum is extended over

1 a period longer than sixty days from the date of sale, only the portion of the sale amount that has  
2 actually been received in cash by the retailer during each reporting period is subject to the tax  
3 imposed by this chapter.

4 Section 18. That § 10-45-3 be amended to read as follows:

5 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the  
6 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation  
7 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;  
8 ~~provided, however, that whenever.~~ However, any trade-in or exchange of used farm machinery  
9 is involved in the transaction, the tax ~~shall~~ is only be due and shall be collected only on the cash  
10 difference.

11 Section 19. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 There are exempted from the provisions of this chapter and the tax imposed by it, gross  
14 receipts from the sale of parts or repairs on machinery or equipment which are clearly identifiable  
15 as used primarily for agricultural purposes, including irrigation equipment, if the part replaces  
16 a farm machinery or irrigation equipment part assigned a specific or generic part number by the  
17 manufacturer of the farm machinery or irrigation equipment.

18 Section 20. That § 10-45-5 be amended to read as follows:

19 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of  
20 any person from engaging in the business of leasing farm machinery or irrigation equipment used  
21 for agricultural purposes and four percent upon the gross receipts of any person from engaging  
22 or continuing in any of the following businesses or services in this state: abstracters; accountants;  
23 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry  
24 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and

1 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply;  
2 membership or entrance fees for the use of a facility or for the right to purchase tangible personal  
3 property or services; photography; photo developing and enlarging; tire recapping; welding and  
4 all repair services; cable television; and rentals of tangible personal property except leases of  
5 tangible personal property between one telephone company and another telephone company,  
6 motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight  
7 days and mobile homes ~~provided, however, that.~~ However, the specific enumeration of  
8 businesses and professions made in this section does not, in any way, limit the scope and effect  
9 of § 10-45-4.

10 Section 21. That § 10-45-5.3 be amended to read as follows:

11 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross  
12 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in  
13 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division  
14 of the Office of Management and Budget, Office of the President.

15 Section 22. That § 10-45-8 be amended to read as follows:

16 10-45-8. There is imposed a tax of four percent upon the gross receipts from all sales of  
17 tickets or admissions to places of amusement and athletic contests or events, except as otherwise  
18 provided in this chapter.

19 Section 23. That § 10-45-24 be amended to read as follows:

20 10-45-24. Each retailer or person engaging in a business in this state whose receipts are  
21 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each  
22 application shall be made on a form prescribed by the secretary of revenue and shall require the  
23 name under which the applicant transacts or intends to transact business, the location of each  
24 business, and other information as the secretary of revenue may require. The application shall be

1 signed by the owner, if a natural person; by a member or partner, if an association or partnership;  
2 or by an executive officer or a person specifically authorized by the corporation to sign the  
3 application, if a corporation, to which shall be attached the written evidence of the person's  
4 authority. The applicant shall have a permit for each place of business, unless the secretary of  
5 revenue grants a request for a statewide permit. A statewide permit may be granted if the  
6 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping  
7 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified  
8 in the application.

9 Any seller registering under the agreement as defined in section 1 of this Act shall be  
10 registered in this state, provided this state has entered into the agreement as provided in section  
11 3 of this Act. Any seller who is registered under such agreement is not required to sign the  
12 registration application and may register through an agent. Any seller who is registered under  
13 such agreement may cancel its registration at any time, but is liable for remitting any sales tax  
14 previously collected.

15 Section 24. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 In computing the tax to be remitted under this chapter as the result of any transaction, the  
18 tax amount shall be carried to the third decimal place. Amounts of tax less than one-half of one  
19 cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an  
20 additional cent.

21 Section 25. That § 10-45-30 be amended to read as follows:

22 ~~10-45-30. Taxes paid on gross receipts represented by accounts found to be worthless and~~  
23 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment of the~~  
24 ~~tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid~~

1 ~~upon the amount so collected.~~ For purposes of this chapter, a bad debt is any portion of the  
2 purchase price of a transaction that a seller has reported as taxable and for which the seller  
3 legally claims as a bad debt deduction for federal income tax purposes. In computing the amount  
4 of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated  
5 for any return. Any deduction taken or refund paid which is attributed to bad debts may not  
6 include interest. Bad debts include worthless checks, worthless credit card payments, and  
7 uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use  
8 taxes charged on the purchase price, uncollectible amounts on property that remain in the  
9 possession of the seller until the full purchase price is paid, expenses incurred in attempting to  
10 collect any debt, debts sold, or assigned to third parties for collection, and repossessed property.  
11 No bad debt deduction may be claimed by any person that has purchased accounts receivable for  
12 collection unless the person is a successor that has acquired the entire business of the seller that  
13 incurred the bad debt.

14 Bad debts shall be deducted within twelve months following the month in which the bad debt  
15 has been charged off for federal income tax purposes. If a deduction is taken for a bad debt and  
16 the seller subsequently collects the debt in whole or in part, the tax on the amount so collected  
17 shall be paid and reported on the next return due after the collection.

18 Notwithstanding the provisions of § 10-59-22, a seller may obtain a refund of tax on any  
19 amount of bad debt that exceeds the amount of taxable sales within the twelve-month period  
20 defined by that bad debt. A refund under this section may not include interest.

21 If a seller's filing responsibilities have been assumed by a certified service provider as defined  
22 in section 1 of this Act, the service provider may claim, on behalf of the seller, any bad debt  
23 allowance provided by this section. The service provider shall credit or refund the full amount  
24 of any bad debt allowance or refund received to the seller.

Section 26. That § 10-45-61 be amended to read as follows:

10-45-61. Notwithstanding § 10-54-1, a seller, who possesses ~~a resale~~ an exemption certificate from a purchaser of tangible personal property or services which indicates the items or services being purchased are ~~for resale in the regular course of business~~ exempt, may rely on the ~~resale~~ exemption certificate and not charge sales tax to the provider of the ~~resale~~ exemption certificate until the provider of the ~~resale~~ exemption certificate gives notice that the items or services being purchased are no longer ~~for resale~~ exempt by filing a new ~~resale~~ exemption certificate with the seller.

The ~~resale~~ exemption certificate shall be signed by the purchaser, provide the purchaser's name, address, and valid state ~~sales~~ tax license number, if applicable, and shall describe the types of tangible personal property and services being purchased ~~for resale~~ exempt by the purchaser ~~in the regular course of business~~. However, any person filing an electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of a ~~resale~~ an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the ~~resale~~ exemption certificate. If there are items covered under the ~~resale~~ exemption certificate which are not being purchased ~~for resale~~ exempt, it is the responsibility of the purchaser when ordering goods from a seller to indicate if any of the items purchased are not ~~for resale~~ exempt, and the appropriate sales tax shall be charged on the portion of the sale that is not ~~for resale~~ exempt. A seller of property or services which are generally described under the ~~resale~~ exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser ~~or unless the state establishes that the seller did not accept the resale certificate in good faith. Absent knowledge of circumstances by the seller which would put the holder of the resale certificate upon inquiry as to its validity, good faith does not require the seller to investigate the~~



1 nature of the purchaser's business.

2 If the purchaser later determines there is any tax due and owing, the purchaser shall remit the  
3 tax owed by the purchaser to the state. If the purchaser ~~purchases for resale but later elects not~~  
4 ~~to resell the goods and consumes or uses them~~ makes an exempt purchase and later determines  
5 that the goods or services purchased are not exempt, the purchaser shall report the transaction  
6 and pay the use tax on the next filing of ~~his~~ the purchaser's return.

7 Any purchaser who knowingly and intentionally lists on a ~~resale~~ an exemption certificate  
8 personal property or services which the purchaser knows, at the time the ~~resale~~ exemption  
9 certificate is filed with the seller, ~~will not be resold~~ are not exempt, or provides an invalid ~~resale~~  
10 exemption certificate with the intent to evade payment of the tax, and fails to timely report the  
11 same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may  
12 assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest  
13 may be charged on the penalty.

14 The seller shall retain the exemption certificate for a period of three years from the date it is  
15 filed by the purchaser and provide the exemption certificate to the department upon request.

16 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for ~~resale~~  
17 exemption certificates.

18 Section 27. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible  
21 personal property and services to the location where the tangible personal property or service  
22 is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the  
23 location of receipt. The rules promulgated pursuant to this section may provide an alternative  
24 method of sourcing telecommunication services.

Section 28. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Registration under the agreement and collection of tax imposed under this chapter or chapter 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

Section 29. That § 10-46-1 be amended to read as follows:

10-46-1. Terms, as used in this chapter mean:

(1) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~ such person with the object of gain, benefit or advantage either direct or indirect;

(2) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;

(3) "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property that will be used in the performance of a contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition also applies to chapter 10-45;

~~(3)~~(4) "Included in the measure of tax," the tangible personal property or the service was purchased from a retailer licensed under chapter 10-45 and that retailer has included the tax in the amount received from the sale;

~~(4)~~(5) "In this state" or "in the state," within the exterior limits of the State of South Dakota and includes all territory within such limits owned by or ceded to the United States of America;

~~(5)~~(6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. A transaction, whereby the

possession of property is transferred but the seller retains the title as security for the payment of the price, is a purchase;

~~(6)(7)~~ "Purchase price" or "sales price," the total amount for which tangible personal property is sold, including any services that are part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expense whatsoever. However, cash discounts allowed and taken on sales may not be included shall have the same meaning as gross receipts defined in subdivision 10-45-1(4);

~~(7)(8)~~ "Retailer," any person performing services in this state or engaged in the business of selling tangible personal property for use, storage or other consumption within the meaning of this chapter. However, if in the opinion of the secretary of revenue, it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the secretary of revenue may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter;

~~(8)(9)~~ "Retailer maintaining a place of business in the state," any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agents operating within the

1 state under the authority of the retailer or its subsidiary, irrespective of whether such  
2 place of business or agent is located here permanently or temporarily or whether such  
3 retailer or subsidiary is admitted to do business within this state pursuant to the laws  
4 of the State of South Dakota granting the rights of foreign corporations to do  
5 business in this state;

6 ~~(9)~~(10) "Secretary," the secretary of the Department of Revenue or any duly  
7 authorized and appointed assistant, deputies, or agents of the secretary charged  
8 with the administration or enforcement of this chapter;

9 ~~(10)~~(11) "Storage," any keeping or retention in this state for use or other consumption  
10 in the State of South Dakota for any purpose except sale in the regular course  
11 of business;

12 ~~(11)~~(12) "Tangible personal property," tangible goods, wares, merchandise, gas, and  
13 electricity if furnished or delivered to consumers or users within this state;

14 ~~(12)~~(13) "Use," the exercise of right or power over tangible personal property incidental  
15 to the ownership of that property, except that it does not include the sale of  
16 that property in the regular course of business. Use also includes the use of the  
17 types of services, the gross receipts from the sale of which are to be included  
18 in the measure of the tax imposed by chapter 10-45, and any amendments  
19 thereto and the delivery or causing delivery into this state of tangible personal  
20 property intended to advertise products or services or promote or facilitate  
21 sales to South Dakota residents.

22 Section 30. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 There are exempted from the provisions of this chapter and the tax imposed by it, the use of

1 parts or repairs on machinery or equipment which are clearly identifiable as used primarily for  
2 agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or  
3 irrigation equipment part assigned a specific or generic part number by the manufacturer of the  
4 farm machinery or irrigation equipment.

5 Section 31. That § 10-59-27 be amended to read as follows:

6 10-59-27. Any taxpayer who has received written advice from the Department of Revenue  
7 concerning the taxability of transactions shall be allowed to rely on such advice when filing tax  
8 returns. However, the taxpayer shall maintain a copy of the advice in ~~their~~ the taxpayer's business  
9 records. The department may not maintain a position against a taxpayer which is inconsistent  
10 with a prior written opinion issued to the same taxpayer unless rescinded by the department, by  
11 a change in statutory law or reported case law, by a change in federal interpretation in cases if  
12 the department's written advice was predicated upon a federal interpretation or by a change in  
13 material facts or circumstances relating to the taxpayer. For the purposes of this section, written  
14 advice includes municipal boundary information, and zip codes and addresses located within  
15 municipalities provided by the department.

16 Section 32. That § 10-52-2 be amended to read as follows:

17 10-52-2. Any incorporated municipality within this state may impose any non-ad valorem tax  
18 in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by  
19 ordinance enacted by its local governing board. However, no tax may be levied on the sale, use,  
20 storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax  
21 conforms in all respects to the state tax on such items with the exception of the rate, and the rate  
22 levied does not exceed two percent.

23 ~~—If a municipality increases its tax rate above one percent, the revenue generated from the tax~~  
24 ~~increase may only be used for capital improvement, to include lease-purchase agreements of~~

1 ~~realty, land acquisition, the funding of public ambulances and medical emergency response~~  
2 ~~vehicles, public hospitals, or nonprofit hospitals with fifty or fewer licensed beds, and other~~  
3 ~~public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, the~~  
4 ~~transfer to the special 911 fund authorized by § 34-45-12, the purchasing of fire fighting vehicles~~  
5 ~~and equipment, debt retirement and the minor rehabilitation, major rehabilitation, or~~  
6 ~~reconstruction of streets as defined in the June, 1994, South Dakota Department of~~  
7 ~~Transportation Pavement Condition Survey Guide for City Streets.~~

8 Section 33. That § 10-52-2.1 be repealed.

9 ~~—10-52-2.1. All local taxes duly enacted under § 10-52-2 before July 3, 1977, are hereby~~  
10 ~~ratified and may continue in force, provided, that no rate, which as of July 1, 1977, is in excess~~  
11 ~~of the rate specified in § 10-52-2, shall be increased.~~

12 Section 34. That § 10-52-2.5 be repealed.

13 ~~—10-52-2.5. The gross receipts from selling food, as defined by the Food Stamp Act of 1977~~  
14 ~~(P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules~~  
15 ~~promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax~~  
16 ~~imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in~~  
17 ~~excess of one percent. The provisions of this section do not apply to municipalities qualifying~~  
18 ~~under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the~~  
19 ~~new rate is in excess of one percent. A municipality may, by local option, exempt food, as~~  
20 ~~defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as~~  
21 ~~amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one~~  
22 ~~percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983,~~  
23 ~~pursuant to § 10-52-2.1, may, by local option, exempt food, as defined by the Food Stamp Act~~  
24 ~~of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983,~~

1 ~~from the tax.~~

2 Section 35. That § 10-52-2.6 be repealed.

3 ~~—10-52-2.6. Parts or repairs on machinery or equipment which are clearly identifiable as used~~  
4 ~~primarily for agricultural purposes, if the part replaces a farm machinery part assigned a specific~~  
5 ~~or generic part number by the manufacturer of the farm machinery, farm machinery and~~  
6 ~~equipment, and agricultural animal health products and medicines are exempt from the tax~~  
7 ~~imposed by this chapter.~~

8 Section 36. That § 10-52-2.9 be repealed.

9 ~~—10-52-2.9. Any municipality which increases its tax rate above the rate it had on January 1,~~  
10 ~~1983, may exempt therefrom those items which were exempt before the increase.~~

11 Section 37. That § 10-52-3 be amended to read as follows:

12 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the  
13 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval  
14 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal  
15 ordinance which was in effect on December 31, 2005, is continued under the provisions of this  
16 chapter if:

17 (1) The governing board of the municipality has reviewed the existing tax ordinance to  
18 determine compliance with the provisions of this chapter; and

19 (2) The governing board of the municipality documents the review, any amendment, and  
20 the intent to continue the tax in the official minutes of the governing board.

21 Any amendment made by the municipality to comply with the provisions of this Act or the  
22 determination to continue the tax under the provisions of this chapter is deemed to be an  
23 administrative decision pursuant to § 9-20-19 and is not subject to referendum.

24 Section 38. That § 10-52-2.10 be amended to read as follows:

1        10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance  
2        with § 10-52-2, ~~or imposing an additional non-ad valorem tax in accordance with § 10-52-8,~~ may  
3        issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in  
4        anticipation of the collection of the taxes. The bonds shall be payable solely from the collections  
5        of the taxes imposed by the municipality under § 10-52-2 ~~or 10-52-8, or both,~~ as determined by  
6        the governing body. The governing body shall, in the resolution or ordinance authorizing the  
7        bonds, agree that it will continue to impose and collect the taxes so long as the bonds are  
8        outstanding. The governing body shall also pledge so much of the collections of the taxes as may  
9        be necessary to pay the principal premium and interest on the bonds and to maintain any debt  
10       service reserve established for the bonds. The For bonds issued prior to January 1, 2006, the  
11       proceeds of the bonds may be used for land acquisition, the funding of public ambulances and  
12       medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer  
13       licensed beds and other public health care facilities or nonprofit health care facilities with fifty  
14       or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt  
15       service reserve fund for the bonds and to pay not more than one year's capitalized interest on the  
16       bonds. ~~If the proceeds of the tax imposed by § 10-52-8 are pledged to payment of the bonds, the~~  
17       ~~land acquisition and capital improvements financed with the proceeds of the bonds shall relate~~  
18       ~~to the purposes enumerated in § 10-52-8.~~

19       No election is required to authorize the issuance of municipal non-ad valorem tax revenue  
20       bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

21       Section 39. That § 10-52-8 be repealed.

22       ~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~  
23       ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~  
24       ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~



~~within the municipality for periods of less than twenty-eight consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or admissions to places of amusement, athletic, and cultural events, or any combination thereof. The tax shall be levied for the purpose of land acquisition, architectural fees, construction costs, payments for civic center, auditorium, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities and the promotion and advertising of the city, its facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and use tax on such items with the exception of the rate.~~

Section 40. That § 10-52-9 be amended to read as follows:

10-52-9. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance enacted under the authority of this chapter, and any tax rate affected thereby, can be effective only on January first or July first of a calendar year. The ordinance or amendment shall be effective on the earlier of January first or July first following at least ~~sixty~~ ninety days notification by the municipality to the secretary of revenue that the ordinance or amendment has been enacted unless the ordinance or amendment is suspended by operation of a referendum. If an ordinance or amendment enacted under this chapter is referred and the referred ordinance or amendment is approved the effective date is the earlier of January first or July first following at least ~~sixty~~ ninety days notification by the municipality to the secretary of revenue that the ordinance or amendment has been approved notwithstanding § 9-20-15. Notification of the enactment or approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or amendment, by registered or certified mail to the secretary of revenue.

Section 41. That § 10-52-11 be repealed.

~~10-52-11. Veterinarian services (group no. 074) and animal specialty services except~~

1 ~~veterinary (industry no. 0752) as enumerated in the Standard Industrial Classification Manual,~~  
2 ~~1987, as prepared by the Statistical Policy Division of the Office of Management and Budget,~~  
3 ~~Office of the President are exempt from the provisions of this chapter. In addition, there are~~  
4 ~~specifically exempted from the provisions of this chapter and the computation of the tax imposed~~  
5 ~~by it, gross receipts from transportation services and the collection and disposal of solid waste.~~

6 Section 42. That § 10-52-12 be repealed.

7 ~~10-52-12. The following services enumerated in the Standard Industrial Classification~~  
8 ~~Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and~~  
9 ~~Budget, Office of the President are exempt from the provisions of this chapter: establishments~~  
10 ~~primarily engaged in air transportation, noncertified carriers (group no. 452).~~

11 Section 43. That § 10-52-13 be amended to read as follows:

12 10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a  
13 municipality which changes the boundaries of the municipality is effective on the first day of the  
14 first month following at least ~~sixty~~ ninety days notification by the municipality to the secretary  
15 of revenue that the resolution or amendment has been enacted unless the ordinance or  
16 amendment is suspended by operation of a referendum. If a resolution or amendment enacted  
17 pursuant to chapter 9-4 is referred and the referred resolution or amendment is approved, the  
18 effective date is the first day of the first month following at least ~~sixty~~ ninety days notification  
19 by a municipality to the secretary of revenue that the resolution or amendment has been  
20 approved. The municipality shall provide written notification of the enactment or approval of the  
21 resolution or amendment, along with a copy of the resolution or amendment by registered or  
22 certified mail or by any electronic means to the secretary of revenue. The municipality shall also  
23 provide any changes or additions to streets and addresses.

24 Section 44. That chapter 10-52 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 For the purposes of the tax imposed by this chapter, the transportation of tangible personal  
3 property and passengers shall be taxed only if the origins and destination of the property or  
4 passenger are within the same municipality.

5 Section 45. The Legislature hereby finds that the amendments to chapter 10-52 contained  
6 in this Act shall result in a broader and more uniform tax base for the sales tax levied by  
7 municipalities under this chapter, and that, absent a reduction in the current tax levy of a  
8 municipality, it is anticipated that total sales tax revenues of a municipality may increase as a  
9 result of these amendments. However, so long as a municipality has any bonds or other  
10 obligations outstanding which are secured directly or indirectly by the pledge or collection and  
11 application of sales taxes levied pursuant to chapter 10-52 as in effect immediately prior to  
12 January 1, 2006, no municipality may reduce its tax levy under chapter 10-52 to a rate which,  
13 in the exercise of the sound discretion of the governing body, would be expected to produce less  
14 total revenue than was collected in the immediately preceding year.

15 Section 46. Sections 18, 19, 20, 21, 30, 32, 33, 34, 35, 36, 41, 42, and 44 are effective on  
16 January 1, 2006.

17 Section 47. Except as may be required by section 45 of this Act, it is the intent of the  
18 Legislature that the provisions of this Act be revenue neutral to all levels of government. Any  
19 municipality that has reviewed its sales tax ordinance as required by section 37 of this Act shall  
20 determine and enact a rate of taxation that, in the exercise of the sound discretion of the  
21 governing body, would be expected to produce no more total revenue than was collected in the  
22 immediately preceding year. However, nothing herein shall prohibit any increase in revenues that  
23 are projected to occur because of economic growth.

24 Section 48. Section 47 of this Act is repealed on January 1, 2007.

1       Section 49. Whereas, this Act is necessary for the support of the state government and its  
2       existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
3       force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

654H0032

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**HB 1002** - 01/17/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and  
Senators McCracken, Dennert, and Reedy at the request of the Interim  
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to impose a gross receipts tax on certain visitor-related  
2 businesses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Lodging establishment," any building, structure, property, or premise kept, used,  
6 maintained, advertised, or held out to the public to be a place where sleeping  
7 accommodations are furnished to transient guests. The following constitute lodging  
8 establishments: bed and breakfast inns, boarding houses, bungalows cabins,  
9 condominiums, cottages, dude ranches, guest houses, guest ranches, hostels, hotels,  
10 inns, lodges, motels, resorts, tourist homes, timeshare rentals, vacation home rentals,  
11 and villas;

12 (2) "Campground," any property or premise kept, used, maintained, advertised, or held  
13 out to the public to be a place where sites are available for placing of tents, campers,  
14 trailers, mobile homes, or other mobile accommodations to transient guests.



Campgrounds include city, county, and state-owned campgrounds, as well as concessionaires or contractors who manage or operate publicly owned campgrounds.

The following constitute campgrounds: campgrounds, camping cabins, camping resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks, trailer parks, and youth camps;

(3) "Visitor attraction," any business establishment that offers recreation, entertainment, or interpretation of natural or cultural history. The following constitute visitor attractions: aerial tramways, amusement parks, animal exhibits, animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers, commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers, outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining, reptile exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas, spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens. A visitor attraction includes any business which is being conducted on the site of another visitor attraction;

(4) "Recreational service," any business establishment that provides leisure or recreational experiences. The following constitute recreational services: aerial sightseeing tours, amusement rides, bath houses, carriage rides, climbing guides, day camps, fishing guides, fishing ponds, golf driving ranges, hunting guides, outfitters, pack trains, private beaches, river rafting, saddle horse rides, sightseeing guides, sightseeing tours, shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets, ski trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps;

- 1       (5)    "Recreational equipment rental," include all items rented for twenty-eight days or less  
2           whose primary purpose is recreational use. Rental, under such circumstances, of the  
3           following constitute recreational equipment rentals: all-terrain vehicles, beach chairs,  
4           bicycles, bumper boats, bumper cars, campers, camping trailers, firearms, fishing  
5           equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,  
6           mopeds, motor coaches, motorcycles, pack animals, recreational courts and  
7           equipment, recreational gold mining equipment, recreational vehicles, recreational  
8           water equipment, rock climbing gear, roller blades, saddle horses, skis, snowboards,  
9           snowmobiles, snowmobile trailers, snowshoes, watercraft, and watercraft trailers;
- 10       (6)    "Spectator event," any organized activity meant for entertainment or education and  
11           open to the public. The following constitute spectator events: air shows, auto races,  
12           auto shows, balloon shows, boat races, car rallies, carnivals, circuses, concerts, dance  
13           festivals, draft horse contests, ethnic festivals, exhibitions, expositions, fairs,  
14           greyhound races, horse races, horse shows, monster truck shows, motorcycle  
15           expositions, motorcycle races, music festivals, rodeos, sporting events, stage  
16           performances, threshing bees, tractor pull contests, and water-skiing shows. A  
17           spectator event includes any business which is conducted on the site of another  
18           spectator event;
- 19       (7)    "Visitor intensive business," any antique shop, book store, candy store, flea market,  
20           gift shop, indigenous arts and crafts shop, jewelry, lapidary shop, leather goods shop,  
21           marina, novelty shop, pottery shop, rock shop, souvenir shop, and tee shirt shop if  
22           fifty percent or more of annual total receipts are derived from the sale of tangible  
23           personal property, during the months of June, July, August, and September. No  
24           postsecondary, college, and university book store is, however, included.

1       Section 2. There is hereby imposed a tax of one percent on the gross receipts from any  
2       lodging establishment, campground, motor vehicle rental, visitor attraction, recreational  
3       equipment rental, recreational service, spectator event, and visitor-intensive business. The tax  
4       imposed by this section on the gross receipts of any visitor-intensive business shall apply to the  
5       gross receipts received by such business during the months of June, July, August, and September.  
6       The tax imposed by this section is in addition to any other tax imposed by chapters 10-45 and  
7       10-46. Tangible personal property, services, and admissions are subject to the tax imposed by  
8       this section only if subject to tax by chapters 10-45 and 10-46.

9       Section 3. The revenue from the tax imposed by section 2 of this Act shall be deposited in  
10      the tourism promotion fund created in § 1-42-31.

11      Section 4. The tax imposed by section 2 of this Act on any lodging establishment applies only  
12      to the gross receipts from the rental of rooms by a lodging establishment.

13      Section 5. The tax imposed by section 2 of this Act on any campground applies to the gross  
14      receipts from the rental of campground space.

15      Section 6. The tax imposed by section 2 of this Act applies to the gross receipts from  
16      admission to a visitor attraction and from the sale of tangible personal property, services,  
17      parking, or transportation at a visitor attraction.

18      Section 7. The tax imposed by section 2 of this Act applies to the gross receipts from  
19      admission to a spectator event and from the sale of tangible personal property, services, parking,  
20      or transportation at a spectator event.

21      Section 8. Gross receipts from the rental of rooms or sites at a lodging establishment or  
22      campground owned by nonprofit religious, educational, or youth organization are exempt from  
23      the tax imposed by section 2 of this Act if rented to a member of such organization.

24      Section 9. The tax imposed by section 2 of this Act shall be collected and administered by



1 the Department of Revenue.

2 Section 10. Any person who is subject to the tax imposed by this Act shall make a return and  
3 remittance to the Department of Revenue on forms prescribed and furnished by the department  
4 in the following manner:

5 (1) Any person, whose tax liability is one thousand dollars or more annually, shall file the  
6 return and remit the tax on or before the twentieth day of the month following each  
7 monthly period;

8 (2) Any person, whose tax liability is less than one thousand dollars annually, shall file the  
9 return and remit the tax on or before the last day of the month following each two-  
10 month period; and

11 (3) Any person, whose tax liability is one thousand dollars or more annually and who  
12 remits the tax by electronic transfer to the state, shall file the return by electronic  
13 means on or before the twenty-third day of the month following each monthly period  
14 and remit the tax on or before the second to the last day of the month following each  
15 monthly period.

16 The secretary of revenue may grant an extension of not more than five days for filing a return  
17 and remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid  
18 if a return or remittance is not made on time.

19 Section 11. The secretary of revenue may require or allow some returns and remittances to  
20 be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due  
21 the last day of the month following the reporting period. For persons issued a temporary or  
22 seasonal sales tax permit pursuant to chapter 10-45, the returns and remittances may be required  
23 at a time determined by the secretary. Section 10-59-6 applies to returns and payments under this  
24 section.

Section 12. The definitions, administrative, collection, and enforcement provisions of chapters 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

Section 13. The secretary of revenue may promulgate rules pursuant to chapter 1-26 concerning:

- (1) Licensing, including bonding and filing license applications;
- (2) The filing of returns and payment of the tax;
- (3) Determining the application of the tax and exemptions;
- (4) Taxpayer record-keeping requirements; and
- (5) Determining auditing methods.

Section 14. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this Act is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this Act within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by section 13 of this Act or refuses to exhibit these records to the secretary of revenue or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this Act within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Willfully violates any rule of the secretary of revenue for the administration and enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony.

Section 15. That § 10-59-1 be amended to read as follows:

1       10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
2       or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,  
3       10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,  
4       49-31-51, 50-4-13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

5       Section 16. That § 10-45-69.1 be repealed.

6       ~~10-45-69.1. There is hereby imposed a tax of one percent on the gross receipts from hotels~~  
7       ~~and lodging places; campgrounds; motor vehicle rentals; visitor attractions; recreational~~  
8       ~~equipment rentals; recreational services; spectator events; and visitor-intensive businesses. The~~  
9       ~~tax imposed by this section to the gross receipts of visitor-intensive businesses shall apply to the~~  
10       ~~gross receipts received by such businesses during the months of June, July, August, and~~  
11       ~~September. The tax imposed by this section is in addition to any other tax imposed by chapters~~  
12       ~~10-45 and 10-46. Tangible personal property, services, and admissions are subject to the tax~~  
13       ~~imposed by this section only if subject to tax by chapters 10-45 and 10-46.~~

14       Section 17. That § 10-45-69.2 be repealed.

15       ~~10-45-69.2. The revenue from the tax imposed by § 10-45-69.1 shall be deposited in the~~  
16       ~~tourism promotion fund created in § 1-42-31.~~

17       Section 18. That § 10-45-69.3 be repealed.

18       ~~10-45-69.3. The tax imposed by § 10-45-69.1 on hotels and lodging establishments shall only~~  
19       ~~apply to the gross receipts from the rental of rooms by hotels and lodging establishments. A~~  
20       ~~lodging establishment is any building, structure, property, or premise kept, used, maintained,~~  
21       ~~advertised, or held out to the public to be a place where sleeping accommodations are furnished~~  
22       ~~in two or more rental units to transient guest. The following constitute hotels and lodging~~  
23       ~~establishments: bed and breakfast inns, boarding houses, bungalows cabins, condominiums,~~  
24       ~~cottages, dude ranches, guest houses, guest ranches, hostels, hotels, inns, lodges, motels, resorts,~~

1 ~~tourist homes, timeshare rentals, vacation home rentals, and villas.~~

2 Section 19. That § 10-45-69.4 be repealed.

3 ~~—10-45-69.4. The tax imposed by § 10-45-69.1 on campgrounds shall apply to the gross~~  
4 ~~receipts from the rental of campground space. A campground is any property or premise kept,~~  
5 ~~used, maintained, advertised, or held out to the public to be a place where sites are available for~~  
6 ~~placing of tents, campers, trailers, mobile homes, or other mobile accommodations in two or~~  
7 ~~more rental units to transient guests. Campgrounds include city, county, and state-owned~~  
8 ~~campgrounds, as well as concessionaires or contractors who manage or operate publicly-owned~~  
9 ~~campgrounds. The following constitute campgrounds: campgrounds, camping cabins, camping~~  
10 ~~resorts, commercial picnic grounds, organizational camps, park units, recreational vehicle parks,~~  
11 ~~trailer parks, and youth camps.~~

12 Section 20. That § 10-45-69.5 be repealed.

13 ~~—10-45-69.5. For the purposes of § 10-45-69.1, a visitor attraction is any business~~  
14 ~~establishment that offers recreation, entertainment, or interpretation of natural or cultural history.~~  
15 ~~The following constitute visitor attractions: aerial tramways, amusement parks, animal exhibits,~~  
16 ~~animal shows, antique car exhibits, antique exhibits, arboreta, aquariums, batting cages, botanical~~  
17 ~~gardens, bumper boats, bumper cars, bungee jumps, carnival rides, chuck wagon suppers,~~  
18 ~~commercial playgrounds, go-cart raceways, gold mines, golf driving ranges, historic sites, human~~  
19 ~~mazes, hunting preserves, miniature golf courses, museums, music shows, observation towers,~~  
20 ~~outdoor dramas, pitch 'n putt golf courses, playhouses, racetracks, recreational gold mining,~~  
21 ~~reptile exhibits, restorations, scenic railroads, shooting preserves, show caves, ski areas,~~  
22 ~~spectator events, water slides, wave pools, wax figure exhibits, and zoological gardens.~~

23 ~~—The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a visitor~~  
24 ~~attraction and from the sale of tangible personal property, services, parking, or transportation.~~

1 ~~A visitor attraction includes any business which is being conducted on the site of another visitor~~  
2 ~~attraction.~~

3 Section 21. That § 10-45-69.6 be repealed.

4 ~~— 10-45-69.6. For the purposes of § 10-45-69.1, a recreational service is any business~~  
5 ~~establishment that provides leisure or recreational experiences. The following constitute~~  
6 ~~recreational services: aerial sightseeing tours, amusement rides, bath houses, carriage rides,~~  
7 ~~climbing guides, day camps, fishing guides, fishing ponds, golf driving ranges, hunting guides,~~  
8 ~~outfitters, pack trains, private beaches, river rafting, saddle horse rides, sightseeing guides,~~  
9 ~~sightseeing tours, shooting galleries, shooting ranges, skeet ranges, ski instruction, ski lift tickets,~~  
10 ~~ski trails, spas, trail rides, trap ranges, tour bus excursions, and youth camps.~~

11 Section 22. That § 10-45-69.7 be repealed.

12 ~~— 10-45-69.7. For the purposes of § 10-45-69.1, recreational equipment rentals include all~~  
13 ~~items rented for twenty-eight days or less whose primary purpose is recreational use. Rental,~~  
14 ~~under such circumstances, of the following constitute recreational equipment rentals: all-terrain~~  
15 ~~vehicles, beach chairs, bicycles, bumper boats, bumper cars, campers, camping trailers, firearms,~~  
16 ~~fishing equipment, flotation devices, go carts, golf clubs, hunting dogs, hunting equipment,~~  
17 ~~mopeds, motor coaches, motorcycles, pack animals, recreational courts and equipment,~~  
18 ~~recreational gold mining equipment, recreational vehicles, recreational water equipment, rock~~  
19 ~~climbing gear, roller blades, saddle horses, skis, snowboards, snowmobiles, snowmobile trailers,~~  
20 ~~snowshoes, watercraft, and watercraft trailers.~~

21 Section 23. That § 10-45-69.8 be repealed.

22 ~~— 10-45-69.8. For the purposes of § 10-45-69.1, a spectator event is any organized activity~~  
23 ~~meant for entertainment or education and open to the public. The following constitute spectator~~  
24 ~~events: air shows, auto races, auto shows, balloon shows, boat races, car rallies, carnivals,~~

1 ~~circuses, concerts, dance festivals, draft horse contests, ethnic festivals, exhibitions, expositions,~~  
2 ~~fairs, greyhound races, horse races, horse shows, monster truck shows, motorcycle expositions,~~  
3 ~~motorcycle races, music festivals, rodeos, sporting events, stage performances, threshing bees,~~  
4 ~~tractor pull contests, and water-skiing shows.~~

5 ~~— The tax imposed by § 10-45-69.1 applies to the gross receipts from admission to a spectator~~  
6 ~~event and from the sale of tangible personal property, services, parking, or transportation at a~~  
7 ~~spectator event. A spectator event includes any business which is conducted on the site of~~  
8 ~~another spectator event.~~

9 Section 24. That § 10-45-69.9 be repealed.

10 ~~— 10-45-69.9. For the purposes of § 10-45-69.1, a visitor-intensive business is any: antique~~  
11 ~~shop, book store, candy store, flea market, gift shop, indigenous arts and craft shop, jewelry,~~  
12 ~~lapidary shop, leather goods shop, marina, novelty shop, pottery shop, rock shop, souvenir shop,~~  
13 ~~and tee shirt shop if fifty percent or more of annual total receipts are derived from the sale of~~  
14 ~~tangible personal property, during the months of June, July, August, and September. No~~  
15 ~~postsecondary, college, and university book store is, however, included.~~

16 Section 25. That § 10-45-69.10 be repealed.

17 ~~— 10-45-69.10. There is exempted from the tax imposed by § 10-45-69.1, gross receipts from~~  
18 ~~the rental of rooms or sites at a lodging establishment or campground owned by nonprofit~~  
19 ~~religious, educational, or youth organization if rented to members of such organizations.~~

20 Section 26. That § 10-45-91 be amended to read as follows:

21 10-45-91. Notwithstanding the provisions of § 10-45-13, admissions to rodeos and rodeo  
22 related activities and events are subject to the tax imposed by §§ 10-45-8 and ~~10-45-69.1~~ section  
23 2 of this Act.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

438H0043

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1003** - 02/08/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and  
Senators McCracken, Dennert, and Reedy at the request of the Interim  
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to authorize a municipal gross receipts tax on certain  
2 lodging, alcoholic beverages, prepared food, and admissions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the Department of Revenue;

6 (2) "Gross receipts," the total amount or consideration, including cash, credit, property,  
7 and services, for which tangible personal property or services are sold, leased, or  
8 rented, valued in money, whether received in money or otherwise, without any  
9 deduction for the following:

10 (a) The retailer's cost of the property or service sold;

11 (b) The cost of materials used, labor or service cost, interest, losses, all costs of  
12 transportation to the retailer, all taxes imposed on the retailer, and any other  
13 expense of the retailer;

14 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for



any services necessary to complete the sale whether or not separately stated, including delivery charges; and

- (d) The value of exempt tangible personal property whether or not separately stated on the invoice, billing, or similar document given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the retailer as a single product or piece of merchandise;

Gross receipts do not include:

- (a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a retailer and taken by a purchaser on a sale;
- (b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- (c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Section 2. Any municipality may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations within the municipality for periods of less than twenty-eight consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or admissions to places of amusement, athletic, and cultural events, or any combination thereof. The tax shall be levied for the purpose of land acquisition, architectural fees, construction costs, payments for civic center, auditorium, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities and the promotion and advertising of the city, its facilities, attractions, and activities.



Section 3. That § 10-52-8 be repealed.

~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations within the municipality for periods of less than twenty-eight consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or admissions to places of amusement, athletic, and cultural events, or any combination thereof. The tax shall be levied for the purpose of land acquisition, architectural fees, construction costs, payments for civic center, auditorium, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities and the promotion and advertising of the city, its facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and use tax on such items with the exception of the rate.~~

Section 4. The tax imposed by section 2 of this Act shall be collected and administered by the department.

Section 5. Any person who is subject to the tax imposed by this Act shall make a return and remittance to the department on forms prescribed and furnished by the department in the following manner:

- (1) Any person whose tax liability is one thousand dollars or more annually, shall file the return and remit the tax on or before the twentieth day of the month following each monthly period;
- (2) Any person whose tax liability is less than one thousand dollars annually, shall file the return and remit the tax on or before the last day of the month following each two-month period; and

(3) Any person whose tax liability is one thousand dollars or more annually and who remits the tax by electronic transfer to the state, shall file the return by electronic means on or before the twenty-third day of the month following each monthly period and remit the tax on or before the second to the last day of the month following each monthly period.

The secretary of revenue may grant an extension of not more than five days for filing a return and remittance. Unless an extension is granted, penalty or interest pursuant to § 10-59-6 shall be paid if a return or remittance is not made on time.

Section 6. The secretary of revenue may require or allow some returns and remittances to be filed on a monthly, bimonthly, semiannual, or annual basis and the return and remittance is due the last day of the month following the reporting period. For any person issued a temporary or seasonal tax permit pursuant to chapter 10-45, the returns and remittances may be required at a time determined by the secretary. Section 10-59-6 applies to any return and payment made pursuant to this section.

Section 7. The definitions, administrative, collection, and enforcement provisions of chapters 10-45 and 10-46 apply to the tax imposed by this Act, where applicable.

Section 8. The secretary of revenue may promulgate rules pursuant to chapter 1-26 concerning:

- (1) Licensing, including bonding and filing license applications;
- (2) The filing of returns and payment of the tax;
- (3) Determining the application of the tax and exemptions;
- (4) Taxpayer record-keeping requirements; and
- (5) Determining auditing methods.

Section 9. Any person who:

- 1       (1)   Makes any false or fraudulent return in attempting to defeat or evade the tax imposed  
2           by this Act is guilty of a Class 6 felony;
- 3       (2)   Fails to pay tax due under this Act within thirty days from the date the tax becomes  
4           due is guilty of a Class 1 misdemeanor;
- 5       (3)   Fails to keep the records and books required by section 10 of this Act or refuses to  
6           exhibit these records to the secretary of revenue or the secretary's agents for the  
7           purpose of examination is guilty of a Class 1 misdemeanor;
- 8       (4)   Fails to file a return required by this Act within thirty days from the date the return is  
9           due is guilty of a Class 1 misdemeanor;
- 10      (5)   Willfully violates any rule of the secretary of revenue for the administration and  
11          enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 12      (6)   Violates either subdivision (2) or subdivision (4) two or more times in any twelve-  
13          month period is guilty of a Class 6 felony.

14       Section 10. Each person subject to tax under this Act shall keep records and books of all  
15   receipts and sales, together with invoices, bills of lading, copies of bills of sale, and other  
16   pertinent papers and documents. The books and records and other papers and documents are,  
17   at all times during business hours of the day, subject to inspection by the secretary of revenue  
18   or the secretary's agents and employees to determine the amount of tax due. The books and  
19   records shall be preserved for a period of three years unless the secretary of revenue, in writing,  
20   authorized their destruction or disposal at an earlier date.

21       Section 11. Any tax imposed by the governing board of any municipality pursuant to the  
22   provisions of this Act, may be referred to a vote of the people for its approval or disapproval in  
23   the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal  
24   ordinance which was in effect on July 1, 2002, is continued under the provisions of this Act if:

1       (1)    The governing board of the municipality has reviewed the existing tax ordinance to  
2               determine compliance with the provisions of this Act; and

3       (2)    The governing board of the municipality documents the review, any amendment, and  
4               the intent to continue the tax in the official minutes of the governing board.

5       Any amendment made by the municipality to comply with the provisions of this Act or the  
6       determination to continue the tax under the provisions of this Act is deemed to be an  
7       administrative decision pursuant to § 9-20-19 and not subject to referendum.

8       Section 12. The administration of the taxes adopted under this Act shall be by the  
9       department. The department may prescribe forms and promulgate rules pursuant to chapter 1-26  
10      for the making of returns and for the ascertainment, assessment, and collection of the tax  
11      imposed pursuant to this Act. The department shall keep full and accurate records of all moneys  
12      received and distributed under this Act.

13      Section 13. All moneys received and collected on behalf of a municipality by the department,  
14      pursuant to this Act, shall be credited to a special municipal tax fund and after deducting the  
15      amount of refunds made, the amounts necessary to defray the cost of collecting the tax, and the  
16      administrative expenses incident thereto, shall be paid within thirty days after collection to the  
17      municipality entitled thereto.

18      Section 14. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance  
19      enacted under the authority of this Act, and any tax rate affected thereby, can be effective only  
20      on January first or July first of a calendar year. The ordinance or amendment shall be effective  
21      on the earlier of January first or July first following at least ninety days notification by the  
22      municipality to the secretary of revenue that the ordinance or amendment has been enacted  
23      unless the ordinance or amendment is suspended by operation of a referendum. If an ordinance  
24      or amendment enacted under this chapter is referred and the referred ordinance or amendment

1 is approved the effective date shall be the earlier of January first or July first following at least  
2 ninety days notification by the municipality to the secretary of revenue that the ordinance or  
3 amendment has been approved notwithstanding § 9-20-15. Notification of the enactment or  
4 approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or  
5 amendment, by registered or certified mail to the secretary of revenue.

6 Section 15. That § 10-59-1 be amended to read as follows:

7 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
8 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,  
9 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,  
10 49-31-51, 50-4-13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

11 Section 16. Any municipality imposing a tax pursuant to this Act may issue municipal non-ad  
12 valorem tax revenue bonds pursuant to this section and chapter 6-8B in anticipation of the  
13 collection of the taxes. The bonds shall be payable solely from the collections of the taxes  
14 imposed by the municipality under this Act, as determined by the governing body. The governing  
15 body shall, in the resolution or ordinance authorizing the bonds, agree that it will continue to  
16 impose and collect the taxes so long as the bonds are outstanding. The governing body shall also  
17 pledge so much of the collections of the taxes as may be necessary to pay the principal premium  
18 and interest on the bonds and to maintain any debt service reserve established for the bonds. The  
19 proceeds of the bonds may be used for land acquisition, the funding of public ambulances and  
20 medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer  
21 licensed beds and other public health care facilities or nonprofit health care facilities with fifty  
22 or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt  
23 service reserve fund for the bonds and to pay not more than one year's capitalized interest on the  
24 bonds. If the proceeds of the tax imposed by this Act are pledged to payment of the bonds, the

1 land acquisition and capital improvements financed with the proceeds of the bonds shall relate  
2 to the purposes enumerated in section 2 of this Act.

3 No election is required to authorize the issuance of municipal non-ad valorem tax revenue  
4 bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

5 Section 17. The Legislature hereby finds that the amendments to chapter 10-52 contained  
6 in this Act shall result in a broader and more uniform tax base for the tax levied by municipalities  
7 under this chapter, and that, absent a reduction in the current tax levy of a municipality, it is  
8 anticipated that total tax revenues of a municipality may increase as a result of these  
9 amendments. However, so long as a municipality has any bonds or other obligations outstanding  
10 which are secured directly or indirectly by the pledge or collection and application of taxes levied  
11 pursuant to § 10-52-8 as in effect immediately prior to the effective date of this Act, no  
12 municipality may reduce its tax levy under this Act to a rate which, in the exercise of the sound  
13 discretion of the governing body, would be expected to produce less total revenue than was  
14 collected in the immediately preceding year pursuant to the tax imposed under § 10-52-8.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0213

## HOUSE ENGROSSED NO. **HB 1034** - 01/25/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to reduce the legal blood alcohol limits for motor vehicle  
2 drivers and boat operators.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. ~~A~~ No person may ~~not~~ drive or be in actual physical control of any vehicle while:

6 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in ~~his~~ that person's blood as  
7 shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily  
8 substance;

9 (2) Under the influence of an alcoholic beverage;

10 (3) Under the influence of marijuana or any controlled drug or substance to a degree  
11 which renders ~~him~~ the person incapable of safely driving; or

12 (4) Under the combined influence of an alcoholic beverage and marijuana or any  
13 controlled drug or substance to a degree which renders ~~him~~ the person incapable of  
14 safely driving.

15 Section 2. That § 32-23-7 be amended to read as follows:



32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight hundredths percent by weight of alcohol in the defendant's blood, such fact ~~shall~~ does not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

Section 3. That § 32-23-1.3 be amended to read as follows:

32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle while the weight of alcohol in the blood of the arrested person is ~~0.10~~ 0.08 percent or greater, shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record and files the reasons with the clerk of courts.



Section 4. That § 32-12A-44 be amended to read as follows:

32-12A-44. No person may drive or be in actual physical control of a commercial motor vehicle while there is between 0.04 and ~~0.10~~ 0.08 percent or more, by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other body substance. Any violation of this section is a Class 2 misdemeanor.

Section 5. That § 42-8-45 be amended to read as follows:

42-8-45. No person may operate a boat while underway on the public waters of the state while:

- (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in his blood as shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage;
- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders ~~him~~ the person incapable of safely driving or operating such boat; or
- (4) Under the combined influence of an alcoholic beverage and marijuana or any controlled drug or substance to a degree which renders ~~him~~ the person incapable of safely driving or operating such boat.

Any violation of this section is a Class 1 misdemeanor.

Section 6. That § 42-8-45.4 be amended to read as follows:

42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the influence of intoxicating liquor;

1       (2)    If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight  
2            hundredths percent by weight of alcohol in the defendant's blood, such fact does not  
3            give rise to any presumption that the defendant was or was not under the influence of  
4            intoxicating liquor, but such fact may be considered with other competent evidence  
5            in determining the guilt or innocence of the defendant;

6       (3)    If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol  
7            in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the  
8            influence of intoxicating liquor.

9       Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0  
10   cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0257

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1052** - 02/12/2002

Introduced by: The Committee on State Affairs at the request of the Department of  
Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the state training  
2 school and the state juvenile reformatory.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-11A-1.2 be repealed.

5 ~~— 26-11A-1.2. The reformatory institution maintained by the state at or in the vicinity of~~  
6 ~~Plankinton, in Aurora County, known and designated by the name of "state training school" shall~~  
7 ~~continue to exist as an institution for the reformation of boys and girls, and shall be under the~~  
8 ~~charge and control of the Department of Corrections.~~

9 Section 2. That chapter 26-11A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 The Department of Corrections is authorized, pursuant to § 5-2-2.4, to lease the former state  
12 training school real and personal property. Any revenue derived from any lease of the former  
13 state training school real or personal property shall be deposited with the commissioner of school  
14 and public lands and distributed to the Department of Corrections for juvenile programs subject



1 to § 4-8-1.

2 Section 3. That § 5-7-34 be amended to read as follows:

3 5-7-34. All money received from the leasing of all common school, indemnity, and  
4 endowment lands for oil and gas and other mineral or geothermal resources leasing of said lands  
5 shall be apportioned as follows:

6 Fifty percent shall be credited to the permanent school funds and fifty percent thereof into  
7 the several interest and income funds in the following proportions, to wit:

8 Common school 82.02289745

9 South Dakota State University 4.66838105

10 University of South Dakota 2.51170245

11 Educational and charitable .72960665

12 ~~Training school~~ Department of Corrections, juvenile programs 1.16718575

13 School for Deaf 1.16728565

14 School for Blind and Visually Impaired .72952995

15 South Dakota Developmental Center--Redfield 1.16726135

16 School of Mines and Technology 1.16728735

17 Black Hills and Dakota State Universities 3.11243403

18 Northern State University 1.55642832

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

733H0446

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1075** - 02/12/2002

Introduced by: Representatives Hansen (Tom) and Brown (Richard) and Senators Munson and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for a bank's investment limitations.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 51A-4 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 A bank may make investments designed primarily to promote the public welfare, including  
6 the welfare of low and moderate income communities or families. A bank may make such  
7 investments directly or by purchasing interests in an entity primarily engaged in making such  
8 investments. No bank may make any such investment if the investment would expose the bank  
9 to unlimited liability. The commission shall limit a bank's investments in any one project and a  
10 bank's aggregate investments under this section. A bank's aggregate investments under this  
11 section may not exceed an amount equal to the sum of five percent of the bank's capital, surplus,  
12 and undivided profits, unless the commission determines by order that the higher amount will not  
13 pose a significant risk to the bank and the bank is adequately capitalized. In no case may a bank's  
14 aggregate investments under this section exceed an amount equal to the sum of ten percent of



- 1 the bank's capital stock actually paid in and unimpaired and ten percent of the bank's unimpaired
- 2 surplus fund.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

543H0472

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1136** - 02/04/2002

Introduced by: Representatives Olson (Mel), Bartling, Bradford, Burg, Davis, Elliott, Flowers, Gillespie, Glenski, Hanson (Gary), Hargens, Hundstad, Kloucek, Nachtigal, Nesselhuf, Peterson (Jim), Sigdestad, and Valandra and Senators Hutmacher, Dennert, Hagen, Koetzle, McIntyre, Moore, Reedy, Sutton (Dan), Symens, and Volesky

1 FOR AN ACT ENTITLED, An Act to clarify the approval authority for local accounts of the  
2 state treasurer and state auditor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 4-4-3 be amended to read as follows:

5 4-4-3. All state public funds shall be received and maintained in the state treasury, and shall  
6 be disbursed only upon proper authorization by the state auditor and the state treasurer, unless  
7 the state treasurer and state auditor ~~shall~~ jointly determine a justification exists for maintaining  
8 ~~such~~ public funds in a local bank account. A local bank account authorized by the state auditor  
9 and state treasurer is an official account of the state subject to the custody of the state treasurer  
10 under § 1-10-1. Neither the state treasurer nor the state auditor may be a signatory on any local  
11 account. Any agency holding state funds in any local bank account shall provide a quarterly  
12 statement of activity in that account to the state treasurer and the state auditor.

13 Section 2. That § 4-3-5 be amended to read as follows:



1        4-3-5. ~~Every such~~ Each officer or employee shall designate in writing, to be filed in ~~his~~ the  
2        officer's or employee's office, the bank or banks in which ~~he shall have~~ are deposited the current  
3        receipts of ~~his~~ the office or department ~~and any~~. Any account showing any such deposit ~~shall be~~  
4        is an official account and shall be accessible to the inspection of the auditor-general at any time  
5        during banking hours.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

463H0318

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1141** - 02/12/2002

Introduced by: Representatives Olson (Mel), Bartling, Duniphan, Flowers, Fryslie, Hennies (Thomas), Konold, Madsen, McCoy, Michels, Nesselhuf, Pederson (Gordon), Peterson (Bill), Pummel, and Smidt and Senators Olson (Ed), Albers, Bogue, Brosz, Daugaard, Diedtrich (Elmer), Hutmacher, Moore, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to provide certain standards for utilization review for  
2 property and casualty insurers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Utilization review," a review of health care services provided or to be provided to  
6 an individual to assist in the determination of the nature of the injury or condition, or  
7 the appropriateness of the treatment provided or to be provided;

8 (2) "Utilization review organization," any entity that provides utilization review services  
9 as defined in this Act.

10 Section 2. A utilization review organization that conducts utilization reviews solely for  
11 property and casualty insurers in this state pursuant to policies issued in this state is not subject  
12 to chapter 58-17C except that any such utilization review organization shall register in the same  
13 manner as prescribed for utilization review organizations pursuant to chapter 58-17C.



1       Section 3. Any property and casualty insurer seeking utilization review with respect to an  
2       insurance contract issued in this state may only use a utilization review organization registered  
3       pursuant to this Act.

4       Section 4. Any utilization review pursuant to this Act shall be administered by a qualified  
5       licensed health care professional. Any adverse determination shall be evaluated by an  
6       appropriately licensed and clinically qualified health care professional. Any utilization review  
7       evaluation shall use generally accepted standards for treatment of the illness, injury, or condition  
8       reviewed. Any utilization review opinion shall be signed by the professional who performed the  
9       review.

10      Section 5. No utilization review organization may base its fees or charges on any  
11      recommendation for reduction in payment under an insurance contract or on a percentage of  
12      claim savings.

13      Section 6. An insurer that denies, in whole or in part, a policyholder's claim after  
14      consideration of a utilization review shall provide the policyholder with an opportunity to request  
15      reconsideration and to submit additional information relating to the claim.

16      Section 7. Nothing in this Act is intended to create or abrogate any cause of action as a result  
17      of a violation of the standards in this Act.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

751H0453

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1181** - 02/12/2002

Introduced by: Representatives Madsen, Broderick, and Olson (Mel) and Senators Munson and Volesky

- 1 FOR AN ACT ENTITLED, An Act to prohibit directed suretyship.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. No public servant may, directly or indirectly, require or direct a bidder on any
- 4 public building or construction contract which is about to be or has been competitively bid to
- 5 obtain from a particular insurer or insurance producer any surety bond or contract of insurance
- 6 required in such bid or contract or required by any law, ordinance, or regulation. However, the
- 7 surety insurer shall be an authorized insurer under Title 58. Nothing in this section prevents any
- 8 such public servant acting on behalf of the government from exercising the right to approve or
- 9 reject a surety bond or contract of insurance as to its form or sufficiency.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

617H0610

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1211** - 02/05/2002

Introduced by: Representative Abdallah and Senator McCracken

1 FOR AN ACT ENTITLED, An Act to provide for the use of electric personal assistive mobility  
2 devices.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For the purposes of this Act, the term, electric personal assistive device, means  
5 a self-balancing two non-tandem wheeled device, designed to transport only one person, with  
6 an electric propulsion system that limits the maximum speed of the device to fifteen miles per  
7 hour per hour or less.

8 Section 2. That § 32-26-21.1 be amended to read as follows:

9 32-26-21.1. No person may drive any vehicle other than a bicycle or an electric personal  
10 assistive device upon a sidewalk or sidewalk area except upon a permanent or duly authorized  
11 temporary driveway. The local governing body of a municipality may restrict a bicycle or an  
12 electric personal assistive device from operating upon a sidewalk or sidewalk area. A violation  
13 of this section is a Class 2 misdemeanor.

14 Section 3. An electric personal assistive device is exempt from the provisions of chapters 32-  
15 3, 32-5, 32-5A, 32-5B, 32-6B, 32-15, 32-17, 32-18, 32-20, 32-37, and 37-5.



1       Section 4. That § 32-27-1.1 be amended to read as follows:

2       32-27-1.1. The term, pedestrian, when used in this chapter means any person moving or  
3       traveling on foot, including any person wearing roller skates ~~or, riding on a skateboard, or riding~~  
4       on an electric personal assistive device.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

750H0537

## HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1216** - 02/05/2002

Introduced by: Representatives Duniphan, Abdallah, Burg, Derby, Klaudt, Madsen, McCoy, Pederson (Gordon), Pitts, Van Gerpen, and Wick and Senators Vitter, Brown (Arnold), Daugaard, Madden, Munson, and Whiting

1 FOR AN ACT ENTITLED, An Act to authorize shareholders to vote and to make certain other  
2 communications by electronic means.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivisions (33) and (34) of § 47-2-1 be amended to read as follows:

5 (33) "Vote" includes authorization by written or electronic document signed and  
6 transmitted by all of the persons, shareholders or directors, required to take the action  
7 described. The term also means the counterparts of a written or electronic document  
8 signed and transmitted by any of the persons taking the action described. Each  
9 counterpart constitutes the action of the persons signing and transmitting it, and all  
10 the counterparts, taken together, constitute one written action by all of the persons  
11 signing them;

12 (34) "Written action" means a written or electronic document signed and transmitted by  
13 all of the persons, shareholders or directors, required to take the action described. The  
14 term also means the counterparts of a written or electronic document signed and



1           transmitted by any of the persons taking the action described. Each counterpart  
2           constitutes the action of the persons signing ~~or~~ and transmitting it, and all the  
3           counterparts, taken together, constitute one written action by all of the persons  
4           signing them.

5           Section 2. That § 47-4-16 be amended to read as follows:

6           47-4-16. A shareholder may vote either in person or by proxy executed in writing or by  
7           electronic transmission by the shareholder or by ~~his~~ the shareholder's duly authorized attorney  
8           in fact. No proxy ~~shall be~~ is valid after eleven months from the date of its execution, unless  
9           otherwise provided in the proxy. A solicitation for proxies ~~must~~ shall specifically state the  
10          matters for which proxies are sought, and ~~a no proxy cannot~~ may be voted on any matter not  
11          specified in the solicitation. If the vote is made by electronic transmission, the transmission shall  
12          either set forth or be submitted with information from which it can be determined that the  
13          transmission was authorized by the shareholder or proxy holder.

14          Section 3. That § 47-5-10 be amended to read as follows:

15          47-5-10. ~~Whenever~~ If any notice is required to be given to any director of a corporation  
16          under the provisions of chapters 47-2 to 47-9, inclusive, or under the provisions of the articles  
17          of incorporation or bylaws of the corporation, a waiver thereof in writing or by electronic  
18          transmission signed and transmitted by the person or persons entitled to such notice, whether  
19          before or after the time stated therein, ~~shall be~~ is equivalent to the giving of such notice.

20          Section 4. That § 47-5-11 be amended to read as follows:

21          47-5-11. Unless otherwise provided by the articles of incorporation or bylaws, any action  
22          required by chapters 47-2 to 47-9, inclusive, to be taken at a meeting of the directors of a  
23          corporation, or any action which may be taken at a meeting of the directors or of a committee,  
24          may be taken without a meeting if a consent in writing or by electronic transmission, setting forth

1 the action so to be taken, shall be signed and transmitted before such action by all of the  
2 directors, or all of the members of the committee, as the case may be. Such consent ~~shall have~~  
3 has the same effect as a unanimous vote.

4 Section 5. For the purposes of this Act, if an electronic signature is required or the term,  
5 signed, is used in connection with an electronic transmission, the term means an electronic sound,  
6 symbol, or process attached to or logically associated with a record and executed or adopted by  
7 a person with the intent to sign the record.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

391H0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1220** - 02/11/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and  
2 to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Upon motion or by petition, a court may allow a person other than a parent to intervene in  
7 an action under this chapter involving child custody. In any matter under this chapter involving  
8 child custody, the court may, in its discretion, appoint a guardian ad litem or legal counsel to  
9 represent the child. The court may award full or partial custody, care, education, and visitation  
10 rights of the child to a person other than a parent.

11 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 In determining any issue regarding custody of a child, the court shall be guided by the best



1 interests of the child. The court may consider any preference expressed by the child if the court  
2 finds the child is of sufficient age and intelligence to express a knowing and voluntary preference.  
3 In any dispute involving child custody, a presumption favoring a parent may be rebutted by  
4 showing serious detriment to the child as evidenced by one or more of the following  
5 extraordinary circumstances:

- 6 (1) The abandonment or persistent neglect of the child by the parent;
- 7 (2) The likelihood of serious physical or emotional harm to the child if placed in the  
8 parent's custody;
- 9 (3) The extended, unjustifiable absence of parental custody;
- 10 (4) The abdication of parental responsibilities;
- 11 (5) The provision of the child's physical, emotional, and other needs by persons other than  
12 the parent over a significant period of time;
- 13 (6) The existence of a bonded relationship between the child and a person other than the  
14 parent sufficient to cause significant emotional harm to the child in the event of a  
15 change in custody;
- 16 (7) The substantial enhancement of the child's well-being while under the care of a person  
17 other than the parent;
- 18 (8) The extent of the parent's delay in seeking to reacquire custody of the child;
- 19 (9) The demonstrated quality of the parent's commitment to raising the child;
- 20 (10) The likely degree of stability and security in the child's future with the parent;
- 21 (11) The extent to which the child's right to an education would be impaired while in the  
22 custody of the parent; or
- 23 (12) Any other circumstances that would substantially and adversely impact the welfare of  
24 the child.

1       Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       A judgment under section 1 of this Act awarding any person other than a biological parent  
4 custodial rights may award the biological parent with visitation rights with the child.

5       Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7       If a court awards a third party custodial rights to a child, the court may set child support in  
8 whatever amount it deems appropriate, and notwithstanding the provisions of any other statute  
9 to the contrary, may waive the biological parent's duty to provide monetary or other support for  
10 their child.

11       Section 5. The term, parent, as used in this Act, means any biological or adoptive parent. The  
12 term, biological parent, as used in this Act, means any biological or adoptive parent.

13       Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,  
14 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
15 effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

490H0173

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1226** - 02/12/2002

Introduced by: Representatives Jaspers, Glenski, McCaulley, and Wick and Senators  
Daugaard and Whiting

1 FOR AN ACT ENTITLED, An Act to eliminate certain waiting periods and notice requirements  
2 associated with certificates of release for mortgages.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 44-8-30 be amended to read as follows:

5 44-8-30. Any officer or duly appointed agent of a title insurance company may, on behalf of  
6 a mortgagor or a person who acquired from the mortgagor title to all or a part of the property  
7 described in a mortgage, execute a certificate of release that complies with the requirements of  
8 §§ 44-8-30 to 44-8-35, inclusive, and record the certificate of release in the real property records  
9 of each county in which the mortgage is recorded if:

10 ~~—(1)—~~ A a satisfaction or release of the mortgage has not been executed and recorded ~~within~~  
11 ~~sixty days~~ after the date payment in full of the loan secured by the mortgage was ~~sent~~  
12 received in accordance with a payoff statement furnished by the mortgagee or the  
13 mortgage servicer; ~~and~~

14 ~~—(2)—~~ The title insurance company, its officer, or agent has sent to the last known address



1 ~~of the mortgagee or the mortgage servicer, at least thirty days before executing the~~  
2 ~~certificate of release, written notice of its intention to execute and record a certificate~~  
3 ~~of release in accordance with §§ 44-8-30 to 44-8-35, inclusive, after the expiration~~  
4 ~~of the sixty-day period.~~

5 Section 2. That § 44-8-31 be amended to read as follows:

6 44-8-31. A certificate of release executed under §§ 44-8-30 to 44-8-35, inclusive, shall  
7 contain substantially all of the following:

- 8 (1) The name of the mortgagor; the name of the original mortgagee; if applicable, the  
9 mortgage servicer; the date of the mortgage; the date of recording; and the volume  
10 and page or document number in the real property records where the mortgage is  
11 recorded; together with similar information for the last recorded assignment of the  
12 mortgage;
- 13 (2) A statement that the mortgage was in the original principal amount of five hundred  
14 thousand dollars or less;
- 15 (3) A statement that the person executing the certificate of release is an officer or a duly  
16 appointed agent of a title insurance company authorized and licensed to transact the  
17 business ~~or~~ of insuring titles to interests in real property in this state under chapter  
18 58-25;
- 19 (4) A statement that the certificate of release is made on behalf of the mortgagor or a  
20 person who acquired title from the mortgagor to all or a part of the property  
21 described in the mortgage;
- 22 (5) A statement that the mortgagee or mortgage servicer provided a payoff statement that  
23 was used to make payment in full of the unpaid balance of the loan secured by the  
24 mortgage; and

1       (6)    A statement that payment in full of the unpaid balance of the loan secured by the  
2           mortgage was made in accordance with the written or verbal payoff statement, and  
3           received by the mortgagee or mortgage servicer, as evidenced by one or more of the  
4           following in the records of the title insurance company or its agent: a bank check,  
5           certified check, escrow account check from the title company or title insurance agent,  
6           or attorney trust account check that has been negotiated by the mortgagee or  
7           mortgage servicer, or other documentary evidence of payment to the mortgage or  
8           mortgage servicer;

9    ~~— (7) — A statement that more than sixty days have elapsed since the date payment in full was~~  
10       ~~sent;~~

11   ~~— (8) — A statement that after the expiration of the sixty-day period the title insurance~~  
12       ~~company, its officer, or agent sent to the last known address of the mortgagee or~~  
13       ~~mortgage servicer, at least thirty days before executing the certificate of release,~~  
14       ~~notice in writing of its intention to execute and record a certificate of release in~~  
15       ~~accordance with §§ 44-8-30 to 44-8-35, inclusive, with an unexecuted copy of the~~  
16       ~~proposed certificate of release attached to the written notice, and~~

17   ~~— (9) — A statement that the title insurance company, its officer, or agent has not received~~  
18       ~~notification in writing of any reason why the certificate of release should not be~~  
19       ~~executed and recorded after the expiration of the thirty-day notice period.~~

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

390H0448

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1234** - 02/12/2002

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Heineman, Davis, and Derby and Senators Everist and McCracken

1 FOR AN ACT ENTITLED, An Act to clarify that certain political contributions to ballot  
2 question committees from association dues and funds are permitted.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-25-2 be amended to read as follows:

5 12-25-2. No candidate, candidate's committee, political action committee, or political party  
6 committee may receive any contribution except from an individual, political action committee,  
7 or a political party. No corporation may contribute or attempt to contribute any valuable  
8 consideration to any candidate, committee, or political party except a ballot question committee.  
9 No association may contribute or attempt to contribute any valuable consideration to any  
10 candidate, committee, or political party except a ballot question committee.

11 Associations may ~~contribute any valuable consideration out of funds contributed~~ create  
12 political action committees which may accept only voluntary nondues contributions from  
13 individuals for the purpose of making political contributions ~~but may not make contributions out~~  
14 ~~of dues or treasury funds.~~



1       A violation of this section is a Class 2 misdemeanor.

2       Section 2. That § 12-25-1 be amended by adding thereto a NEW SUBDIVISION to read as  
3 follows:

4       "Association," a corporate or noncorporate group that has been expressly organized to  
5 satisfy the common intents and purposes of its members.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

894H0621

## HOUSE ENGROSSED NO. **HB 1253** - 02/07/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Gillespie, Bartling, Bradford, Burg, Davis, Elliott, Flowers, Hargens, Hennies (Thomas), Kloucek, McCoy, Nachtigal, Nesselhuf, Olson (Mel), Valandra, and Van Norman and Senators McIntyre, de Hueck, Dennert, Hutmacher, Koetzle, Moore, Staggers, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the juvenile  
2 corrections monitor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-11A-27 be amended to read as follows:

5 26-11A-27. The monitor created in § 26-11A-25 ~~may~~ shall:

6 (1) Investigate incidents of abuse or neglect of such individuals within the juvenile  
7 corrections facilities, if the incidents are reported to the monitor or if there is  
8 reasonable suspicion to believe that the incidents occurred;

9 (2) Access any individual in the custody or care of juvenile corrections facilities and any  
10 employee in the employ of the State of South Dakota or any of its political  
11 subdivisions;

12 (3) Access any records of or relating to any individual in the custody or care of juvenile  
13 facilities;



- 1       (4)   Provide ~~an annual~~ a semi-annual report to the Governor, the Legislature, the  
2           Corrections Commission established by § 1-15-1.13, the secretary of the Department  
3           of Human Services, and the secretary of the Department of Corrections. The report  
4           shall contain the activities of the monitor for the ~~fiscal year~~ six-month period  
5           immediately prior to the report. Activities shall reflect the number of referrals to the  
6           monitor, the number of investigations completed, results of the investigations,  
7           corrective actions taken, and a summary of other activities performed by the monitor;
- 8       (5)   Provide training and assistance to employees of the Department of Corrections in  
9           areas within the scope of the monitor's position;
- 10      (6)   Review Department of Corrections' policies dealing with juvenile's rights to ensure  
11           compliance with federal and state laws, rules, and policy;
- 12      (7)   Provide reasonable notification of the existence and role of the monitor to all  
13           individuals in the custody or care of a juvenile corrections facility and the custodial  
14           parent or guardian.

15      Section 2. That § 26-11A-29 be repealed.

16      ~~— 26-11A-29. The Department of Corrections or such other executive branch agency that the~~  
17      ~~Governor directs, shall, on or before December 1, 2000, submit to the Government Operations~~  
18      ~~and Audit Committee a report and recommendation regarding the desirability and feasibility of~~  
19      ~~the Department of Corrections seeking American Correctional Association accreditation of all~~  
20      ~~juvenile corrections facilities under the direction of the Governor.~~

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

771H0419

## SENATE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1273** - 02/13/2002

Introduced by: Representative Duniphan and Senator Ham

1 FOR AN ACT ENTITLED, An Act to revise the requirements for obtaining plates and  
2 certificates to park in any space reserved for the disabled.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5-76 be amended to read as follows:

5 32-5-76. An owner of a motor vehicle, who is a resident of this state, who has complied with  
6 all the laws of this state in obtaining regular number license plates for the motor vehicle, and who  
7 operates or directs the operation of the vehicle, may submit to the county treasurer an application  
8 containing a physician's certificate on a form approved by the secretary, ~~which states~~ stating that  
9 the applicant is so substantially disabled by a physical disability that it is impossible or causes  
10 substantial hardship to walk. The secretary shall promulgate a rule, pursuant to chapter 1-26,  
11 defining physical disability and disabled. The county treasurer shall procure, issue, and deliver  
12 to the applicant plates with letters, numbers, or symbols, or any combination thereof, as the  
13 secretary may prescribe. The plates shall be designed to readily apprise law enforcement officers  
14 of the fact that the motor vehicle is owned, operated, or used in transporting a substantially  
15 disabled person. No charge may be made for the issuance of the distinctive plates. The distinctive



1 plates shall be in addition to the regular number plates issued for the motor vehicle. The  
2 distinctive plates shall be displayed as set forth in § 32-5-98 and the regular number plates shall  
3 be kept on or in the motor vehicle. If the applicant is no longer disabled by a physical disability  
4 or is deceased, the distinctive plates shall be surrendered within thirty days to the county  
5 treasurer of the applicant's residence, and the treasurer shall notify the secretary who shall make  
6 the necessary changes in the registration file. The regular number plates shall remain with the  
7 motor vehicle to which ~~they~~ the plates were issued. Failure to surrender the distinctive license  
8 plates as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to submit  
9 a false or fraudulent application.

10 Section 2. That § 32-5-76.1 be amended to read as follows:

11 32-5-76.1. Any person who is a resident of this state and disabled by a physical disability so  
12 that it is impossible or causes substantial hardship to walk may be issued a portable serially  
13 numbered certificate by the secretary which permits the person or the operator of a vehicle being  
14 used in transporting the person to park without time limitation pursuant to § 32-30-11.1 and to  
15 park in any space reserved for the ~~handicapped~~ disabled. The person shall submit an application  
16 containing a physician's certificate on forms approved by the secretary to prove that the person  
17 meets the criteria established by this section. If the secretary determines that the applicant meets  
18 the criteria, the secretary shall issue a portable certificate to the applicant. The secretary shall  
19 promulgate rules, pursuant to chapter 1-26, governing the application for, term of, and  
20 conditions under which such certificates may be issued. If the applicant is no longer disabled by  
21 a physical disability or is deceased, the portable certificate shall be surrendered to the county  
22 treasurer of the applicant's residence within thirty days, and the treasurer shall notify the  
23 secretary who shall make the necessary changes in the file. Failure to surrender the portable  
24 certificate as required by this section is a Class 2 misdemeanor. It is a Class 1 misdemeanor to

1 submit a false or fraudulent application or to alter the portable certificate.

2 Section 3. That § 32-5-76.2 be amended to read as follows:

3 32-5-76.2. Any nonprofit organization, licensed hospital, retirement home, or educational  
4 institution which has under its care or responsibility physically disabled persons, which transports  
5 physically disabled persons, and which has complied with all laws of this state in obtaining title,  
6 license plates, and registration for its motor vehicles may apply for a portable serially numbered  
7 certificate which permits the operator of a vehicle transporting the disabled person to park  
8 pursuant to § 32-30-11.1 ~~and to park only.~~ However, the vehicle may only park for the time  
9 reasonably necessary to load or unload passengers in any space reserved for the ~~handicapped~~  
10 disabled. In addition, any local government entity that owns a vehicle used to transport disabled  
11 individuals may apply for the portable certificate. The application shall be made on a form  
12 approved by the secretary. If the department determines that the applicant transports disabled  
13 persons, the secretary shall issue and deliver a portable certificate to the applicant. The secretary  
14 may promulgate rules pursuant to chapter 1-26 regarding the application for, term of, and  
15 conditions under which the certificate may be issued. If the applicant no longer transports  
16 physically disabled persons, ~~it~~ the applicant shall surrender the certificate to the department  
17 within thirty days. Failure to surrender the portable certificate as required by this section is a  
18 Class 2 misdemeanor. It is a Class 1 misdemeanor to submit a false or fraudulent application or  
19 to alter the portable certificate.

20 Section 4. That § 32-5-76.3 be amended to read as follows:

21 32-5-76.3. Any nursing facility licensed pursuant to the provisions of chapter 34-12 and  
22 which has complied with all laws of this state in obtaining title, license plates, and registration  
23 for its motor vehicles may apply for a set of distinctive plates as prescribed by § 32-5-76 ~~which~~  
24 ~~permits~~ permitting the operator of a vehicle transporting any disabled person to park pursuant

1 to § 32-30-11.1. However, the vehicle may only park for the time reasonably necessary to load  
2 or unload passengers in any space reserved for the disabled. The application shall be made on a  
3 form approved by the secretary. If the department determines that the applicant is licensed as a  
4 nursing facility, the secretary shall issue and deliver a set of distinctive plates to the applicant.  
5 The secretary may promulgate rules, pursuant to chapter 1-26, regarding the application for,  
6 term of, and conditions under which the distinctive plates may be issued. If the applicant no  
7 longer transports physically disabled persons, the applicant shall surrender the distinctive plates  
8 to the department within thirty days. Failure to surrender the distinctive license plates as required  
9 by this section is a Class 2 misdemeanor.

10 Section 5. That § 32-30-11 be amended to read as follows:

11 32-30-11. Any person, other than the veteran to whom it was issued, who uses a disabled  
12 veteran's license of identification issued pursuant to ~~§ 32-30-7~~ § 32-5-108 for the purpose of  
13 parking an automobile as permitted by § 32-30-8, commits a ~~petty offense~~ Class 2 misdemeanor.  
14 In addition the court shall assess a civil penalty of not less than one hundred dollars nor more  
15 than three hundred dollars if the parking space is marked in accordance with the American With  
16 Disabilities Act accessibility guidelines as of January 1, 2002.

17 Section 6. That § 32-30-11.1 be amended to read as follows:

18 32-30-11.1. Any physically ~~handicapped~~ disabled person, who displays special license plates  
19 issued under § 32-5-76 or 32-5-108, a serially numbered certificate issued under § 32-5-76.1 or  
20 32-5-76.2, or a similar license plate or certificate issued in another state on an automobile used  
21 in transporting ~~him~~ that person, shall be entitled to park without limitation in areas where parking  
22 is normally restricted by time factors and to park in any space reserved for the ~~handicapped~~  
23 disabled. However, a municipality may, by ordinance, prohibit parking on any street or highway  
24 for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic

1 during morning and afternoon rush hours, ~~and the~~. The privileges extended to such ~~handicapped~~  
2 disabled persons ~~shall do~~ not apply on streets or highways where and during ~~such times as any~~  
3 time parking is prohibited.

4 Section 7. That § 32-30-11.2 be amended to read as follows:

5 32-30-11.2. If the police of any municipality or any other political subdivision ~~shall find~~ finds  
6 that ~~such~~ special license plates or certificates are being improperly used, ~~they~~ the police shall  
7 report such violation to the Department of ~~Commerce and Regulation~~ Revenue which ~~may~~ shall  
8 revoke the privilege of displaying license plates or certificates ~~so that are~~ that are improperly used.

9 Section 8. That § 32-30-11.3 be amended to read as follows:

10 32-30-11.3. Any person who is not physically ~~handicapped~~ disabled and who exercises the  
11 privileges granted a physically ~~handicapped~~ disabled person under § 32-30-11.1 commits a  
12 Class 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one  
13 hundred dollars nor more than three hundred dollars if the parking space is marked in accordance  
14 with the American With Disabilities Act accessibility guidelines as of January 1, 2002.

15 Section 9. That § 32-30-11.4 be amended to read as follows:

16 32-30-11.4. The owner of any vehicle not displaying a serially numbered certificate or special  
17 license plate parked or stopped in a parking space, or blocking a parking space, on public or  
18 private property designated as reserved for the physically ~~handicapped~~ disabled commits a Class  
19 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one hundred  
20 dollars nor more than three hundred dollars if the parking space is marked in accordance with  
21 the American With Disabilities Act accessibility guidelines as of January 1, 2002.

22 Section 10. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 No owner of a vehicle may park, stop, or stand in an access aisle or lane immediately

1 adjacent to reserved parking spaces or in front of a ramp or curb-cut in such a manner that  
2 blocks access to a disabled person who uses a wheelchair. A violation of this section is a Class  
3 2 misdemeanor. In addition the court shall assess a civil penalty of not less than one hundred  
4 dollars nor more than three hundred dollars if the parking space is marked in accordance with  
5 the American With Disabilities Act accessibility guidelines as of January 1, 2002.

6 Section 11. That § 32-30-11.6 be amended to read as follows:

7 32-30-11.6. ~~Municipalities may~~ Each municipality shall by ordinance, designate special  
8 parking spaces which shall be accessible to and usable by persons with physical disabilities. The  
9 parking spaces shall be designed in accordance with the Americans With Disabilities Act as  
10 amended on January 1, 2002.

11 Section 12. That chapter 32-30 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Each sign designating a parking space for the physically disabled shall state the penalties for  
14 illegal use of the parking space. This section only applies to a new sign or a sign that replaces an  
15 existing sign after July 1, 2002.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

913H0705

HOUSE ENGROSSED NO. **HB 1280** - 02/07/2002

Introduced by: Representative Derby

1 FOR AN ACT ENTITLED, An Act to revise the definition of a controlled group for sales tax  
2 purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-20.3 be amended to read as follows:

5 10-45-20.3. For the purposes of this chapter, a controlled group consists of ~~such~~  
6 ~~corporations or other entities which are~~ any corporations or other entities eligible to file a  
7 consolidated federal income tax return under the Internal Revenue Code as in effect on  
8 January 1, ~~1983~~ 2002, or entitled to only a single surtax exemption for federal corporate income  
9 tax purposes under the Internal Revenue Code as in effect on January 1, ~~1983~~ 2002, and includes  
10 a controlled group of corporations as defined at 26 U.S.C. § 1563 as in effect on January 1, ~~1989~~  
11 2002. A controlled group also consists of any subchapter S corporation, limited liability  
12 company, limited liability partnership, general partnership, or limited partnership with at least  
13 eighty percent common ownership as if the entity was converted to or taxed as a subchapter C  
14 corporation under the Internal Revenue Code as in effect on January 1, 2002.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

358H0670

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1283** - 02/11/2002

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Eccarius and Michels and Senators Daugaard, Diedrich (Larry), and Everist

1 FOR AN ACT ENTITLED, An Act to establish the crime of physical abuse of an infant, to  
2 designate the offense as a crime of violence, and to provide certain penalties therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-18-1.1 be amended to read as follows:

5 22-18-1.1. Any person who:

6 (1) Attempts to cause serious bodily injury to another, or causes such injury, under  
7 circumstances manifesting extreme indifference to the value of human life;

8 (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous  
9 weapon;

10 (3) Attempts to cause or knowingly causes any bodily injury to a law enforcement officer  
11 or other public officer engaged in the performance of the officer's duties;

12 (4) Assaults another with intent to commit bodily injury which results in serious bodily  
13 injury;

14 (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent



1           serious bodily harm; ~~or~~

2       (6)   Is a convicted person under the jurisdiction of the Department of Corrections and  
3           attempts to cause, or knowingly causes bodily injury to a Department of Corrections  
4           employee, or authorized visitor, volunteer, or person under contract assigned to the  
5           Department of Corrections; or

6       (7)   Attempts to cause or causes serious bodily injury to an infant, less than three years  
7           old, by causing any intracranial or intraocular bleeding, swelling, or contusion to the  
8           brain, whether caused by blows, shaking, or causing the infant's head to impact with  
9           an object or surface;

10   is guilty of aggravated assault. Aggravated assault is a Class 3 felony. However, a violation of  
11   subdivision (7) is a Class 2 felony.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0723

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1300** - 02/04/2002

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to clarify the state's sovereign immunity in the courts of  
2 other jurisdictions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 3-21-10 be amended to read as follows:

5 3-21-10. No waiver of state immunity by statute or, where permitted, by any officer or agent  
6 of the state may constitute or be interpreted as a waiver of the state's immunity from lawsuits in  
7 federal court or the courts of any jurisdiction other than the South Dakota Unified Judicial  
8 System.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0727

## HOUSE ENGROSSED NO. **HB 1303** - 02/07/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the Governor's emergency powers in the event of  
2 a terrorist or bioterrorist attack.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 33-15-8 be amended to read as follows:

5 33-15-8. In the event of disaster, war, act of terrorism as defined in state law, or emergency  
6 that is beyond local government capability, the Governor:

- 7 (1) May assume direct operational control over all or any part of the emergency  
8 management functions within the state which may affect all or any portion of the state;
- 9 (2) May declare an emergency or disaster to exist in the stricken area and employ  
10 emergency management to assist local authorities to affect relief and restoration;
- 11 (3) May call upon and use any facilities ~~and~~ equipment, other nonmedical supplies, and  
12 resources available from any source, other than personal or private funds, in order to  
13 carry out the purposes of this chapter by contributing to the expense incurred in  
14 providing relief in such amounts as he shall determine;
- 15 (4) May suspend the provisions of any rules of any state agency, if strict compliance with



1 the provisions of ~~such~~ the rule would in any way prevent, hinder, or delay necessary  
2 action in managing a disaster, war, act of terrorism, or emergency, including fire,  
3 flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil  
4 spill, or other water or air contamination, epidemic, blight, drought, infestation,  
5 explosion, riot, or hostile military or paramilitary action, which is determined by the  
6 Governor to require state or state and federal assistance or actions to supplement the  
7 recovery efforts of local governments in alleviating the damage, loss, hardship, or  
8 suffering caused thereby; ~~and~~

9 (5) May control the ingress and egress in a designated disaster or emergency area, the  
10 movement of vehicles upon highways within the area, the movement of persons within  
11 the area, and the occupancy of premises within the area;

12 (6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or  
13 medical supplies located within the state as may be reasonable and necessary to  
14 respond to the disaster, emergency, or act of terrorism;

15 (7) May appoint and prescribe the duties of such out-of-state health care providers as may  
16 be reasonable and necessary to respond to the disaster, emergency, or act of  
17 terrorism;

18 (8) May provide for the examination and safe disposal of any dead body as may be  
19 reasonable and necessary to respond to the disaster, emergency, or act of terrorism;  
20 and

21 (9) May provide for the protection, construction or reconstruction, repair, and  
22 maintenance of public or private transportation facilities.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0728

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1304** - 02/05/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the emergency powers of the Department of  
2 Health.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of this Act, a public health emergency is an occurrence or imminent threat  
7 of an illness, health condition, or widespread exposure to an infectious or toxic agent that poses  
8 a significant risk of substantial harm to the affected population.

9 Section 2. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The secretary of health, with the consent of the Governor, may declare a public health  
12 emergency as defined by section 1 of this Act. In declaring a public health emergency, the  
13 secretary shall issue an order that specifies:

- 14 (1) The nature of the public health emergency;  
15 (2) The geographic area subject to the declaration;



(3) The conditions that have brought about the public health emergency; and

(4) The expected duration of the state of public health emergency, if less than thirty days.

Section 3. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as follows:

The department shall have primary jurisdiction, responsibility, and authority for responding to a public health emergency declared pursuant to section 2 of this Act including:

(1) Planning and executing public health emergency assessment, mitigation, preparedness, and response;

(2) Coordinating public health emergency response between state and local authorities;

(3) Collaborating with relevant federal, state, tribal, and local authorities; and

(4) Organizing public information activities regarding public health emergency response operations.

The Department of Health may promulgate rules, pursuant to chapter 1-26, to implement the provisions of this section.

Section 4. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as follows:

Any public health emergency declared pursuant to section 2 of this Act shall be terminated automatically after thirty days unless renewed by the secretary under the same standards and procedures set forth in section 2 of this Act.

Section 5. That § 34-3-26 be amended to read as follows:

34-3-26. The powers and duties of the board of health in a full-time county or district health department shall be the same as those specified for county boards of health and the superintendents thereof as provided for by ~~§§ 34-2-4 to 34-2-10, inclusive~~ chapter 34-16 and sections 8 and 9 of this Act.



1       Section 6. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Each county may establish a county board of health which shall be composed of the state's  
4 attorney of the county, who shall be president of the board; a physician, a physician assistant, or  
5 nurse practitioner who practices in the county, appointed by the Department of Health, who shall  
6 serve as superintendent of the board of health; and one other resident of the county.

7       Section 7. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9       The county board of health shall meet at the county seat at such times as the superintendent  
10 may designate. The president of the county board of health shall preside at the meetings.

11       Section 8. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13       The superintendent of the county board of health shall have charge of and superintend,  
14 subject to the approval of the board, all the matters and things specified in this chapter. In case  
15 of immediate danger to the health of persons, the superintendent may act without consultation  
16 with the county board, for the prevention of such danger, and shall immediately report the action  
17 to the president of the county board and to the secretary of health.

18       Section 9. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20       The county board of health, within the territorial limits of its county not included in any first  
21 or second class municipality having its own board of health, may remove or cause to be removed  
22 any dead, decaying, or putrid body, or any decayed, putrid, or other substance that may endanger  
23 the health of persons or domestic animals.

24       Section 10. That § 34-2-1 be repealed.

1 ~~34-2-1. There shall be a county board of health which shall be composed of the state's~~  
2 ~~attorney of the county, who shall be president thereof, and two licensed physicians, residents of~~  
3 ~~the county, appointed by the Department of Health, one of whom shall be named superintendent~~  
4 ~~and the other vice-president of such county board, and whose term of office shall be for two~~  
5 ~~years. In counties where there are no resident physicians, the Department of Health may provide~~  
6 ~~for such county boards under such rules and regulations as it may deem proper.~~

7 Section 11. That § 34-2-2 be repealed.

8 ~~34-2-2. Should a vacancy occur in any county board of health from any cause other than the~~  
9 ~~expiration of the time for which a member had been appointed, the secretary of health shall, upon~~  
10 ~~proper notification of such vacancy, proceed to appoint a proper person to fill the vacancy.~~

11 Section 12. That § 34-2-3 be repealed.

12 ~~34-2-3. The county board of health shall meet at the county seat at such times as the~~  
13 ~~superintendent may designate, notice of the time and place of meeting to be given by him to the~~  
14 ~~other members of the board at least five days prior to the meeting. The president of the county~~  
15 ~~board of health shall preside at the meetings thereof.~~

16 Section 13. That § 34-2-4 be repealed.

17 ~~34-2-4. The superintendent of the county board of health shall be ex officio secretary of the~~  
18 ~~board of health of his county and shall keep a record of all the proceedings of the board and of~~  
19 ~~his official acts and shall at the end of every month make a full report in writing to the secretary~~  
20 ~~of health of the proceedings of the county board and of his official acts, and of the condition of~~  
21 ~~the public health, and whenever any contagious or infectious disease occurs in his county shall~~  
22 ~~immediately report the same to the secretary of health.~~

23 Section 14. That § 34-2-5 be repealed.

24 ~~34-2-5. The superintendent of the county board of health shall have charge of and~~

1 ~~superintend, subject to the approval of the board of which he is a member and the supervisory~~  
2 ~~control of the Department of Health, all the matters and things specified in this chapter and, in~~  
3 ~~case of immediate danger to the health of persons, he may act as in his judgment he may deem~~  
4 ~~proper without consultation with the county board, for the prevention of such danger, and shall~~  
5 ~~immediately report such action to the president of the county board and to the secretary of~~  
6 ~~health.~~

7 Section 15. That § 34-2-6 be repealed.

8 ~~— 34-2-6. Subject to the supervising control of the Department of Health, the county board of~~  
9 ~~health, within the territorial limits of its county not included in any first or second class~~  
10 ~~municipality having its own board of health, shall have power to enforce any and all needful rules~~  
11 ~~and regulations made by the Department of Health for the prevention and cure, and to prevent~~  
12 ~~the spread of contagious diseases.~~

13 Section 16. That § 34-2-7 be repealed.

14 ~~— 34-2-7. Subject to the supervising control of the Department of Health, the county board of~~  
15 ~~health, within the territorial limits of its county not included in any first or second class~~  
16 ~~municipality having its own board of health, shall have power to establish quarantine and isolate~~  
17 ~~any person afflicted with a contagious or infectious disease.~~

18 Section 17. That § 34-2-8 be repealed.

19 ~~— 34-2-8. Subject to the supervising control of the Department of Health, the county board of~~  
20 ~~health, within the territorial limits of its county not included in any first or second class~~  
21 ~~municipality having its own board of health, shall have power to appoint all duly licensed~~  
22 ~~physicians within the county deputies with power to quarantine any and all cases of infectious,~~  
23 ~~contagious, or communicable diseases, subject to quarantine pursuant to the rules and~~  
24 ~~regulations of the Department of Health. For all services rendered in quarantining, such deputies~~

1 ~~shall be entitled to the sum of one dollar for each premise so quarantined. The county board shall~~  
2 ~~also have power to delegate to any person or physician within the county authority to release any~~  
3 ~~quarantine, under the supervision of such county board, to fumigate premises, and to do any and~~  
4 ~~all other things that may be necessary to protect the health of the public.~~

5 Section 18. That § 34-2-9 be repealed.

6 ~~—34-2-9. Subject to the supervising control of the Department of Health, the county board of~~  
7 ~~health, within the territorial limits of its county not included in any first or second class~~  
8 ~~municipality having its own board of health, shall have power to remove or cause to be removed~~  
9 ~~any dead, decaying, or putrid body, or any decayed, putrid, or other substance that may endanger~~  
10 ~~the health of persons or domestic animals.~~

11 Section 19. That § 34-2-10 be repealed.

12 ~~—34-2-10. Subject to the supervising control of the Department of Health, the county board~~  
13 ~~of health, within the territorial limits of its county not included in any first or second class~~  
14 ~~municipality having its own board of health, in addition to the powers granted by §§ 34-2-6 to~~  
15 ~~34-2-9, inclusive, shall have original power to inquire into sanitary conditions of schoolhouses~~  
16 ~~within the county, and upon complaint and investigation shall have power to abate any unsanitary~~  
17 ~~conditions that may be found to exist. When upon investigation such county board of health shall~~  
18 ~~find any schoolhouse in such an unsanitary condition that it is detrimental to the health of the~~  
19 ~~children attending school therein, it shall immediately summon the school board of any such~~  
20 ~~district to a hearing thereon and require the school board to abate the condition complained of.~~  
21 ~~The order so made shall be in writing and a copy of such order placed on file in the office of the~~  
22 ~~business manager of such board. Any order so made shall be enforceable in the same manner as~~  
23 ~~are other orders made by such board with the same rights of appeal to the circuit court.~~

24 Section 20. That § 34-2-11 be repealed.

1 ~~34-2-11. Any person who shall violate any of the provisions of this chapter, or any of the~~  
2 ~~rules and regulations made by the Department of Health to carry out the provisions thereof, or~~  
3 ~~who shall willfully oppose or obstruct any health officer in performing his duty is guilty of a Class~~  
4 ~~1 misdemeanor.~~

5 Section 21. That § 34-2-12 be repealed.

6 ~~34-2-12. The president of the county board of health shall receive no compensation except~~  
7 ~~ten cents for every mile actually and necessarily traveled in the performance of his duties as a~~  
8 ~~member of such board.~~

9 Section 22. That § 34-2-13 be repealed.

10 ~~34-2-13. The superintendent of the county board of health shall receive ten cents for every~~  
11 ~~mile actually and necessarily traveled by the nearest route in the performance of his duties when~~  
12 ~~not the attending physician, which mileage shall be in lieu of all compensation for traveling~~  
13 ~~expenses; the superintendent or the vice-president, if he performs the duties of the~~  
14 ~~superintendent, shall receive such other sums as the board of county commissioners may allow.~~

15 Section 23. That § 34-2-14 be repealed.

16 ~~34-2-14. For each investigation, visit, or examination necessarily made under the rules of the~~  
17 ~~Department of Health, when no investigation, visit, or examination has been made by any other~~  
18 ~~member of the county board of health or any deputy appointed under this chapter, the~~  
19 ~~superintendent of the county board of health or the vice-president, if he performs the duties of~~  
20 ~~the superintendent, shall receive five dollars.~~

21 Section 24. That § 34-2-15 be repealed.

22 ~~34-2-15. The superintendent of the county board of health shall also receive the sum of five~~  
23 ~~dollars per month for making the daily reports and keeping the records of his office as required~~  
24 ~~by the rules and regulations of the Department of Health, and he or the vice-president, if he~~

1 ~~performs the duties of the superintendent, shall further receive such other sum or sums as he may~~  
2 ~~pay or become liable to pay for medicine, chemicals, drugs, or appliances in carrying out and~~  
3 ~~performing the various duties imposed upon him by law which, together with other expenses,~~  
4 ~~shall be audited by the board of county commissioners and paid as other county expenses.~~

5 Section 25. That § 34-2-16 be repealed.

6 ~~—34-2-16. In counties where the total annual fees and mileage drawn by the superintendent of~~  
7 ~~the county board of health exceeds the sum of two thousand dollars, the board of county~~  
8 ~~commissioners of such counties may in their discretion pay such superintendent a monthly wage~~  
9 ~~or salary, in amount to be fixed and determined by said board of commissioners and in such case~~  
10 ~~such wage or salary shall be paid to and received by said superintendent in lieu of all mileage and~~  
11 ~~fees as provided in this chapter.~~

12 Section 26. That § 34-16-3 be repealed.

13 ~~—34-16-3. All county boards of health and health officers shall make such investigations and~~  
14 ~~reports and obey such directions concerning communicable diseases as the Department of Health~~  
15 ~~may require or give, and under the general supervision of the department they shall cause all laws~~  
16 ~~and regulations relating to public health and sanitary matters to be obeyed and enforced.~~

17 Section 27. That § 34-16-4 be repealed.

18 ~~—34-16-4. Every county board of health member or officer refusing or neglecting to perform~~  
19 ~~any duty imposed upon him by or pursuant to this chapter or by any statute, ordinance, bylaw,~~  
20 ~~or rule or regulation relating to public health and sanitary measures shall be punished according~~  
21 ~~to the provisions of § 34-2-11.~~

22 Section 28. That § 34-16-6 be repealed.

23 ~~—34-16-6. Whenever the township board of health thinks it necessary for the preservation of~~  
24 ~~the health of its inhabitants to enter any building, car, truck, automobile, or vessel in the~~

1 ~~township for the purpose of examining into and destroying, removing, or preventing any~~  
2 ~~nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the~~  
3 ~~board may make complaint under oath to a judge of the circuit court for the county, stating the~~  
4 ~~facts in the case so far as he has knowledge thereof.~~

5 Section 29. That § 34-16-7 be repealed.

6 ~~—34-16-7. The circuit court judge to whom complaint is made pursuant to § 34-16-6 shall~~  
7 ~~thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him~~  
8 ~~to take sufficient aid and, accompanied by two or more of the board of health, between the hours~~  
9 ~~of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of~~  
10 ~~sickness complained of may be and to destroy, remove, or prevent the same under the direction~~  
11 ~~of the members of such board of health.~~

12 Section 30. That § 34-16-8 be repealed.

13 ~~—34-16-8. Whenever any nuisance, source of filth, or cause of sickness is found on private~~  
14 ~~property, the township board of health shall order the owner or occupant thereof at his own~~  
15 ~~expense to remove the same within twenty-four hours; and if the owner or occupant thereof~~  
16 ~~neglects so to do he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name~~  
17 ~~of and for the use of the township.~~

18 Section 31. That § 34-16-9 be repealed.

19 ~~—34-16-9. Whenever an owner or occupant of private property shall not comply with an order~~  
20 ~~of the board of health under § 34-16-8, the board may cause the nuisance, source of filth, or~~  
21 ~~cause of sickness to be removed, and all expenses incurred thereby shall be paid by the owner~~  
22 ~~or occupant or by such other person as has caused or permitted the same.~~

23 Section 32. That § 34-16-10 be repealed.

24 ~~—34-16-10. Whenever it shall be brought to the knowledge of any member of the board of~~

1 ~~township supervisors that the dead, putrid, or decaying body of any animal is unburied in his~~  
2 ~~township and is or may become offensive or endangers or may endanger the health of persons~~  
3 ~~or domestic animals, such supervisor shall forthwith notify the person who was at the time of its~~  
4 ~~death the owner of such animal and also the person who was at such time in charge thereof, if~~  
5 ~~known to him and residing in the township, to burn or bury such body or otherwise dispose of~~  
6 ~~such body in the manner provided by law within a reasonable time to be fixed by the said~~  
7 ~~supervisor.~~

8 Section 33. That § 34-16-11 be repealed.

9 ~~— 34-16-11. If the owner or person in charge shall fail, neglect, or refuse to burn or bury or~~  
10 ~~otherwise dispose of such body in accordance with the laws, rules, and regulations provided by~~  
11 ~~§§ 34-16-10 to 34-16-13, inclusive, within the time required by such supervisor, or if such~~  
12 ~~persons are unknown to the said supervisor or do not reside in the township, the said supervisor~~  
13 ~~shall at once cause the same to be buried or burned and the expense of the same shall be paid by~~  
14 ~~the township where such animal is found dead.~~

15 Section 34. That § 34-16-12 be repealed.

16 ~~— 34-16-12. The burning or burial provided for in §§ 34-16-10 and 34-16-11 shall be done~~  
17 ~~effectively and thoroughly so that the body shall not emit any stench or be offensive or in any~~  
18 ~~manner endanger the health of persons or domestic animals.~~

19 Section 35. That § 34-16-13 be repealed.

20 ~~— 34-16-13. The owner of such animal and the person in charge thereof shall at once become~~  
21 ~~liable to the township for the costs and expenses of burning or burial and notice pursuant to~~  
22 ~~§ 34-16-11, and the same may be recovered in an action to be instituted against both or either~~  
23 ~~of such persons.~~

24 Section 36. That § 34-22-3 be repealed.



1 ~~— 34-22-3. When a disease dangerous to the public health breaks out in any township the~~  
2 ~~township board of health shall immediately provide such hospital or place of reception for the~~  
3 ~~sick and infected as is judged best for their accommodation and the safety of the inhabitants;~~  
4 ~~which shall be subject to the regulations of the board; and the board may cause any sick or~~  
5 ~~infected person to be removed thereto, unless his condition will not admit of such removal~~  
6 ~~without danger to his health, in which case the house or place where he remains shall be~~  
7 ~~considered as a hospital and with all its inmates subject to the regulations of the board.~~

8 Section 37. That § 34-22-4 be repealed.

9 ~~— 34-22-4. When any person coming from abroad, or residing in any civil township in this state,~~  
10 ~~is infected or has lately been infected with smallpox or other contagious or infectious disease~~  
11 ~~dangerous to the public health, the board of health of the township where such sick or infected~~  
12 ~~person is may immediately cause such person to be removed to a separate house, if it can be~~  
13 ~~done without danger to his health, and shall provide for such person, nurses, medical attendance,~~  
14 ~~and other necessities which shall be a charge in favor of such township against the person so~~  
15 ~~provided for, his parents or guardian, if able to pay the same, otherwise against the county to~~  
16 ~~which he belongs, or the state, if such person be a nonresident of the state.~~

17 ~~— If such infected person cannot be removed without danger to his health, the board shall make~~  
18 ~~provision as directed in the preceding paragraph for such person in the house where he may be,~~  
19 ~~and in such case it may cause the persons in the neighborhood to be removed, and may take such~~  
20 ~~other measures as it may deem necessary for the safety of the inhabitants.~~

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0730

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1305** - 02/05/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to define terrorism, to create the crime of terrorism, and to  
2 provide a penalty therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 22-8 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any person who commits a crime of violence as defined by subdivision 22-1-2(9) or an act  
7 dangerous to human life including any use of chemical, biological, or radioactive material, or any  
8 explosive or destructive device with the intent to do any of the following:

- 9 (1) Intimidate or coerce a civilian population;
- 10 (2) Influence the policy or conduct of any government or nation;
- 11 (3) Affect the conduct of any government or nation by assassination or kidnapping; or
- 12 (4) Substantially impair or interrupt public communications, public transportation,  
13 common carriers, public utilities, or other public services;

14 is guilty of an act of terrorism. A violation of this section is a Class A felony.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0713

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HJR 1010** - 01/30/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 A JOINT RESOLUTION, proposing and submitting to the electors at the next general election  
2 an amendment to Article IV, section 4, of the Constitution of the State of South Dakota,  
3 extending the time allowed for the Governor's review of legislation passed by the Legislature.

4 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
5 SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the following amendment to  
7 Article IV, section 4 of the Constitution of the State of South Dakota, as set forth in section 2  
8 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state  
9 for approval.

10 Section 2. That Article IV, section 4 of the Constitution, of the State of South Dakota, be  
11 amended to read as follows:

12 § 4. Whenever the Legislature is in session, any bill presented to the Governor for signature  
13 shall become law when the Governor signs the bill or fails to veto the bill within five days, not  
14 including Saturdays, Sundays, or holidays, of presentation. A vetoed bill shall be returned by the  
15 Governor to the Legislature together with ~~his~~ the Governor's objections within five days, not



1 including Saturdays, Sundays, or holidays, of presentation if the Legislature is in session or upon  
2 the reconvening of the Legislature from a recess. Any vetoed bill shall be reconsidered by the  
3 Legislature and, if two-thirds of all members of each house shall pass the bill, it shall become law.

4 Whenever a bill has been presented to the Governor and the Legislature has adjourned sine  
5 die or recessed for more than five days within five days from presentation, the bill shall become  
6 law when the Governor signs the bill or fails to veto it within fifteen days after such adjournment  
7 or start of the recess.

8 The Governor may strike any items of any bill passed by the Legislature making  
9 appropriations. The procedure for reconsidering items struck by the Governor shall be the same  
10 as is prescribed for the passage of bills over the executive veto. All items not struck shall become  
11 law as provided herein.

12 Bills with errors in style or form may be returned to the Legislature by the Governor with  
13 specific recommendations for change. Bills returned shall be treated in the same manner as  
14 vetoed bills except that specific recommendations for change as to style or form may be  
15 approved by a majority vote of all the members of each house. If the Governor certifies that the  
16 bill conforms with ~~his~~ the Governor's specific recommendations, the bill shall become law. If the  
17 Governor fails to certify the bill, it shall be returned to the Legislature as a vetoed bill.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0216

## HOUSE ENGROSSED NO. **SB 32** - 02/12/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to require photo identification for all aeronautics operations,  
2 to increase the pilot registration fee, and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 50-11-24 be amended to read as follows:

5 50-11-24. Any person operating any aircraft within this state shall, except as otherwise  
6 expressly provided, biennially, on or before the thirty-first day of March, register with the  
7 secretary of transportation, ~~his~~ the person's federal ~~airman's~~ certificate issued under the authority  
8 of the United States and shall biennially pay to the secretary a fee of ~~fifteen~~ twenty dollars.  
9 Failure to register and pay the fee before the time set by this section is a Class 2 misdemeanor.  
10 ~~Certificates~~ A certificate showing ~~such~~ the registration may be issued by the ~~director~~ secretary  
11 as the Aeronautics Commission deems proper ~~and the~~ The commission may prescribe  
12 requirements for the possession and exhibition ~~thereof~~ of the certificate.

13 Section 2. That chapter 50-11 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Any airport employee, airline employee, and any employee of a fixed base operator or a



1 charter service, unless otherwise required by federal law or regulation, shall have in possession  
2 while on duty at the airport a state-issued photo identification badge. The Aeronautics  
3 Commission shall promulgate rules pursuant to chapter 1-26 specifying display of the badge;  
4 indications on the badge regarding the scope of the person's access and movement privileges at  
5 an airport; personal information including full name, employer, and identification number;  
6 procedures regarding the production, issuance, retrieval, and replacement of badges; and the  
7 length of time for which the badge is valid.

8 The commission shall, by rules promulgated pursuant to chapter 1-26, establish the fee for  
9 a badge. The fee shall be based on the cost to produce the badge but may not exceed ten dollars.  
10 Any fee collected shall be deposited into the state aeronautics fund.

11 Section 3. Whereas, this Act is necessary for the support of the state government and its  
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
13 force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

734H0534

## HOUSE HEALTH AND HUMAN SERVICES

### COMMITTEE ENGROSSED NO. **SB 93** - 02/08/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Madden, de Hueck, Everist, Greenfield, Ham, Hutmacher, Koskan, McIntyre, Olson (Ed), Staggers, Sutton (Dan), and Whiting and Representatives Peterson (Bill), Adelstein, Begalka, Broderick, Clark, Duenwald, Frost, Heineman, Klaudt, Napoli, Olson (Mel), Pitts, Valandra, and Van Etten

1 FOR AN ACT ENTITLED, An Act to establish certain requirements for genetic testing.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 34-14 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 If a genetic test, as defined in § 34-14-21, is required or authorized by state law, or  
6 performed in the state, the test shall be performed in a laboratory accredited by the College of  
7 American Pathologists, the Joint Commission on Accreditation of Healthcare Organizations, or  
8 any accreditation body approved by the United States Secretary of Health and Human Services  
9 and which has requirements that are substantially equivalent to, or more comprehensive than,  
10 those of the College of American Pathologists. In addition, the laboratory shall be enrolled in a  
11 proficiency testing program sponsored by an organization approved by the Centers for Medicare  
12 and Medicaid Services. Nothing in this section alters the ability of the state health laboratory to



1 perform genetic tests.

2 Section 2. That § 34-14-24 be amended to read as follows:

3 34-14-24. Nothing in §§ 34-14-21 to 34-14-24, inclusive, or section 1 of this Act, alters the  
4 ability to perform genetic tests done in pursuance of a lawful criminal investigation or court  
5 order.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0719

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 183** - 02/08/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to prohibit misleading unsolicited commercial e-mails.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Terms used in this Act mean:

6 (1) "Assist the transmission," actions taken by a person to provide substantial assistance  
7 or support that enables any person to formulate, compose, send, originate, initiate, or  
8 transmit a commercial electronic mail message if the person providing the assistance  
9 knows or consciously avoids knowing that the initiator of the commercial electronic  
10 mail message is engaged, or intends to engage, in any practice that violates this  
11 chapter;

12 (2) "Commercial electronic mail message," an electronic mail message sent for the  
13 purpose of promoting real property, goods, or services for sale or lease. The term  
14 does not mean an electronic mail message to which an interactive computer service  
15 provider has attached an advertisement in exchange for free use of an electronic mail



1 account, if the sender has agreed to such an arrangement;

2 (3) "Electronic mail address," a destination, commonly expressed as a string of  
3 characters, to which electronic mail may be sent or delivered;

4 (4) "Initiate the transmission," the action by the original sender of an electronic mail  
5 message. The term does not refer to the action by any intervening interactive  
6 computer service that may handle or retransmit the message, unless such intervening  
7 interactive computer service assists in the transmission of an electronic mail message  
8 if it knows, or consciously avoids knowing, that the person initiating the transmission  
9 is engaged, or intends to engage, in any act or practice that violates this chapter;

10 (5) "Interactive computer service," any information service, system, or access software  
11 provider that provides or enables computer access by multiple users to a computer  
12 server, including specifically a service or system that provides access to the internet  
13 and systems operated or services offered by libraries or educational institutions;

14 (6) "Internet domain name," a globally unique, hierarchical reference to an internet host  
15 or service, assigned through centralized internet naming authorities, comprising a  
16 series of character strings separated by periods, with the right-most string specifying  
17 the top of the hierarchy.

18 Section 2. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 No person may initiate the transmission, conspire with another to initiate the transmission,  
21 or assist the transmission, of a commercial electronic mail message from a computer located in  
22 South Dakota or to an electronic mail address that the sender knows, or has reason to know, is  
23 held by a South Dakota resident that:

24 (1) Uses a third party's internet domain name without permission of the third party, or

1 otherwise misrepresents or obscures any information in identifying the point of origin  
2 or the transmission path of a commercial electronic mail message; or

3 (2) Contains false or misleading information in the subject line.

4 For purposes of this section, a person knows that the intended recipient of a commercial  
5 electronic mail message is a South Dakota resident if that information is available, upon request,  
6 from the registrant of the internet domain name contained in the recipient's electronic mail  
7 address.

8 Section 3. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 The Legislature finds that the practices covered by this Act are matters vitally affecting the  
11 public interest for the purpose of protecting the public. A violation of this Act is not reasonable  
12 in relation to the development and preservation of business and is an unfair or deceptive act in  
13 trade or commerce and an unfair method of competition for the purpose of applying this chapter.

14 Section 4. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 An interactive computer service may, upon its own initiative, block the receipt or  
17 transmission through its service of any commercial electronic mail that it reasonably believes is,  
18 or will be, sent in violation of this Act.

19 No interactive computer service is liable for any action voluntarily taken in good faith to  
20 block the receipt or transmission through its service of any commercial electronic mail which it  
21 reasonably believes is, or will be, sent in violation of this Act.

22 Section 5. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 A recipient or a provider of internet access services may bring either or both of the following

1 actions:

2 (1) An action based on a violation of section 2 of this Act to enjoin such violation.

3 (2) An action to recover damages for such a violation in an amount equal to the greater  
4 of:

5 (a) The amount of the actual monetary loss; or

6 (b) Five hundred dollars for each violation, not to exceed a total of ten thousand  
7 dollars.

8 If the court finds that the defendant willfully, knowingly, or repeatedly violated section 2 of  
9 this Act, the court may increase the amount of the award to an amount equal to not more than  
10 three times the amount available under this section.

11 In any such action, the court may require an undertaking for the payment of the costs of such  
12 action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

13 At the request of any party to an action brought pursuant to this section or any other  
14 participant in such an action, the court may issue protective orders and conduct legal proceedings  
15 in such a way as to protect the secrecy and security of the computer, computer network,  
16 computer data, computer program, and computer software involved in order to prevent possible  
17 recurrence of the same or a similar act by another person and to protect any trade secrets of any  
18 such party or participant.

19 Section 6. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 A commercial electronic mail message shall include in the subject line of each message  
22 "ADV:" as the first four characters. If these messages contain information that consists of  
23 material that may only be viewed, purchased, rented, leased, or held in possession by an  
24 individual eighteen years of age and older, the subject line of each message shall include

- 1 "ADV:ADLT" as the first eight characters.